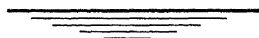


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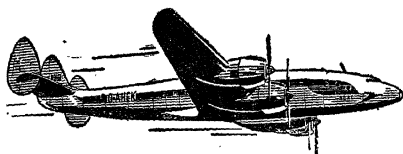
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Winter 1949



Vol. III No. 1

# PARLIAMENTARY AFFAIRS

THE JOURNAL OF THE HANSARD SOCIETY

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*Hon. Editor:* STEPHEN KING-HALL

*Editor:* SYDNEY D. BAILEY

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## HANSARD SOCIETY NEWS

by STEPHEN KING-HALL

*Chairman of the Council and Honorary Director*

THE article which appears under the above title in each issue of our Journal is much shorter than usual this quarter for two reasons. First, it is desired to devote as much space as possible to the subject of American Government. Second, members of the Society will already have received the annual report which describes our recent activities.

The greatest enemy of parliamentary government is apathy. It is the function of the Hansard Society to extirpate that enemy and in order to strengthen our forces we need more members.

I am well aware of the economic difficulties which face many British citizens at this time but I suggest that an annual subscription of £1 rs. for corporate membership from a firm is still within the capacity of most units in British industry.

In the U.S.A. and Canada an annual subscription of \$3.25 from a private individual or a corporation still belongs to the sphere of petty cash, but of course the ignorance about our work in these countries is much greater than in Britain.

We welcome the growing list of American universities who are corporate members or take the journal, and I take this opportunity of appealing to Professors of Political Science and such like gentlemen in the academic world of the U.S.A. to examine our work, to realize that it is world-wide in scope, and to give us their support.

We are now established in our new headquarters and I anticipate that in the next issue of this journal I shall be able to give you particulars of the occasion when Hansard House will have been officially opened in the presence of the Prime Minister, Mr. Speaker, the Lord Chancellor, and other distinguished guests.

EMBASSY OF THE  
UNITED STATES OF AMERICA

22nd August, 1949.

Dear Commander King-Hall:

I have noted with pleasure the distinguished writers and interesting topics listed in the table of contents for the special American issue of PARLIAMENTARY AFFAIRS.

This group of well-chosen writers can hardly fail to bring to the careful reader, be he British or American, a deeper understanding of the structure and practices of the United States.

I hope that the special American issue of PARLIAMENTARY AFFAIRS will be widely read in all the countries where it is distributed.

Sincerely,

A handwritten signature in dark ink, appearing to be 'A. B. King', written in a cursive style.

Commander Stephen King-Hall,  
Chairman and Hon. Director,  
The Hansard Society,  
39, Millbank,  
London, S.W.1.

BRITISH EMBASSY,

WASHINGTON 8, D. C.

13th September, 1949.

I learn with great interest that you are devoting an issue of Parliamentary Affairs to the American system of government.

Few things, I think, are of greater importance in the world today than that there should be mutual understanding among the parliamentary democracies of their respective systems of government. Such understanding cannot be expected unless we are prepared to give study to the subject. If we are to have that co-operation between the democratic countries of the world which is essential to the safe continuance of their way of life, we must have sufficient knowledge of the factors inherent in their systems of government at least to enable us to understand the workings of those systems in reaction to the strains and stresses, political and economic, domestic and international, of today.

To this end, this issue of Parliamentary Affairs, with its comprehensive table of contents and its many distinguished and experienced authors, will I am sure prove a worthy guide. I wish it every success.

*Yours sincerely*  
*Oliver Franks.*

Commander Stephen King-Hall,  
Chairman and Hon. Director,  
The Hansard Society,  
39, Millbank,  
London, S.W.1.

## THE AMERICAN PRESIDENCY

by HAROLD J. LASKI

*(Professor of Political Science, University of London)*

THE President of the United States now holds by far the most complex public office to which a man can be elected by public vote. In the range of his powers, in the immensity of his influence, and in his special situation as at once the head of a great state, and his own Prime Minister, his position is unique. Death and impeachment apart, nothing can remove him from office during the four years for which he has been elected. He may vary in character from virtual nonentities, like Franklin Pierce, or Millard Fillmore, or Benjamin Harrison, to figures of world stature, like Thomas Jefferson, or Abraham Lincoln, or Franklin Roosevelt. He can be, if he so desires, the complete master of his own Cabinet; and, unlike the British Prime Minister, the resignation of none of them will injure his authority, nor is it very likely to affect his prestige. Since the American Constitution is built upon the separation of powers, he can never be certain that he will be the master of Congress, even if his own party be in a majority in both of its branches; and it is at least possible that, as his occupancy of his great position draws to a close, he will find it rather his rival than his partner. If, indeed, like Woodrow Wilson in 1918, or Harry S. Truman in 1946, he finds the rival party in a Congressional majority, he may find all his policies defeated; and even if, like Hoover in his first Congress, his majority remains a considerable one, he may still leave office an unhappy and frustrated man. Roughly speaking, the President of the United States since some such time as the Civil War must exercise such authority and influence that he dominates Congress, as, on the whole, Franklin Roosevelt was able to do; or he is likely to be such a small man that,



like Calvin Coolidge, he is content to recognize that the effective source of initiative is in Congressional hands. It is not an exaggeration to say that, since 1865, William McKinley is the only President who was able to remain on consistently good terms with the legislative branch of the government.

The Presidential candidates are chosen by nominating conventions of their respective parties, usually held in the June or July preceding the November of the year of election. Voters choose Presidential Electors in each state, the Electors then forming a College which possesses, in form, the power to choose whom they will; if they cannot decide, as in 1824, the authority to choose then devolves upon the House of Representatives. In fact, today the real voting is by states, and the distribution of the population still leaves open the possibility that a successful candidate may have a majority in the Electoral College and a minority of the ballots cast by the voters themselves. It is far from easy to say what makes a nominee at the convention of either of the major parties emerge as the successful candidate; though it must be said that the nomination is very rarely the accident it is sometimes supposed to be. Washington was the obvious choice as the first candidate; long and careful preparation, including the skilfully planned decision to hold the Republican Convention at Chicago, secured the nomination for Abraham Lincoln; Grant was the candidate because he was the most successful general in the Civil War; the pathetic Warren G. Harding was the "dark horse" of a combination of Senators and Ohio politicians, mainly corrupt, who correctly anticipated, in 1920, that there would be a deadlock in the Republican Convention between the supporters of General Leonard Wood and those of Governor Frank D. Lowden, of Illinois. Roosevelt was chosen, in 1932, by the Democrats, after a long and brilliantly organized pre-election campaign which left little room for a successful counter-offensive by his opponents. Even Wendell Willkie, whose nomination as the Republican candidate against Franklin Roosevelt in 1940 seemed so surprising in the light of a previous career wholly unconnected with politics, had in fact entered the fight with well-organized

support, built on the possession of large funds, which had been carefully planned for over a year before the Convention. As George Washington, the first President, held office for two terms, and then insisted upon retiring to private life, it had become almost a convention in American politics that no President should be elected for more than two terms; and the convention remained unbroken until Franklin Roosevelt, who was to break so many traditions of his office, was elected to a third term in 1940, and to a further term in 1944.

The authority of the President rests upon a number of bases. There is his legal power as defined by the Constitution. He is Commander-in-Chief of the Armed Forces; he is the effective source of administrative power, which includes not only the right to direct the negotiation of treaties, but also, in the diplomatic sphere, to make executive agreements which, even if they do not have the status of treaties, may have at least as profound an importance; and he has the right to nominate to all the more important offices on the judicial and executive sides of the federal government, subject to the confirmation of the Senate. Much of the President's strength depends upon the skilful use of this patronage; for upon its operation in the different states there may well depend his ability to win or lose not only the votes of their representatives in Congress, but also the strength in them of his party organization, or one of its factions. By his nominations, moreover, to the Supreme Court, the President may well help to establish, even if indirectly, the criteria of constitutionality that famous institution applies; the change in the attitude of the Court after 1936 was mainly due to the fact that resignation or death enabled Mr. Roosevelt to nominate a new Chief Justice and six other of its nine members. The President, further, can propose legislation to Congress, and call it to Washington for special sessions additional to those provided for in the Constitution. He can also address it by message, or in person, when he wishes; and he has the certainty, on these occasions, that most citizens of the United States will be giving their attention to what he has

to say. He can also veto legislation passed by Congress; and, in that event, no bill becomes law unless it is passed again by Congress with a two-thirds majority in its favour in each House.

The President has not only great power; he has also great influence. Whatever voice is heard in the United States, his voice will secure attention for any subject upon which he chooses to speak; and there is, of course, no one to whose utterance so much careful scrutiny will be given abroad. While he is in office, he is the leader of his party; and there is no aspect of its policy or organization upon which his will not be the most influential word. Apart, moreover, from his official power of appointment, he can use, both at home and abroad, unofficial agents in whom he has confidence, on fact-finding and even policy-forming, missions; and once he has accredited them, their authority may well outweigh that of anyone occupying an official position whether in the executive or the legislative branch of the government. It is only necessary to remember the relation of Colonel House to President Wilson in the first world war, and of Mr. Harry Hopkins to President Roosevelt in the second, to see how important an unofficial Presidential agent may be; and Mr. Hopkins was only the most outstanding of a long list which reaches back at least to the well-known "Kitchen Cabinet" of Andrew Jackson, and beyond. Though, too, the power to declare war resides in Congress, the President may, as Commander-in-Chief of the American Armed Forces and as the sole legal depository of American diplomatic negotiation, so dispose what he commands in any critical situation as to make it virtually impossible for Congress to act differently from his wishes. It is perhaps too much to say that the war with Mexico in 1846 was the result of the stubborn determination of President James K. Polk; but it is not excessive to argue that, in the absence of his determination, the war would not have occurred. The remarkable debate in the House of Commons on 21st July, 1949, made it clear that President Roosevelt himself was the responsible author of the policy of unconditional

surrender imposed upon Nazi Germany and its satellites; and it is clear from Mr. Churchill's own narrative that he committed his allies to that policy without feeling the need of consultation with them.

The President is the complete master of his Cabinet; it exists only as an advisory body to him in whom alone the executive power legally resides. He may consult with it before taking action; he may act against its advice; he may act without consulting it at all. He may discuss matters of high importance with one or a few of its members, leaving the rest in complete darkness; Mr. Roosevelt so acted over his plan for the reform of the Supreme Court in 1937, and again in the making of the atomic bomb in the years after Pearl Harbour. He may, like Woodrow Wilson, compel the resignation of his Secretary of War by a vigorous rejection of that Minister's policy, and then, in a matter of weeks, direct the new Secretary of War to embark upon his predecessor's policy in a far more emphatic manner than was originally proposed. He may have Cabinet meetings in most weeks all the year round; but there may equally well be long periods in which he has no Cabinet meetings at all.

It is a convention of the Presidential system rarely broken—the last break was in 1925 under Calvin Coolidge—that the Senate will confirm the names of those whom the President chooses for his Cabinet. Usually he will choose at least one member with long Congressional experience—as Mr. Roosevelt chose Mr. Cordell Hull as Secretary of State—in the knowledge that inside experience of that body will help to keep smooth his relations with it. He may seek to placate or reward an unsuccessful rival for the Presidential nomination by a post in the Cabinet; that was why Mr. Wilson made Mr. W. J. Bryan his Secretary of State. He is likely to make one of the outstanding figures in the party machine Postmaster-General, with the duty to advise him on the use of all but the highest patronage; so Mr. Hoover made a Mr. Brown his Postmaster-General; and the same function, in the same office, was performed by Mr. James Farley for Mr. Roosevelt until they quarrelled in the course of the later years of the President's

second term. The President is likely, in choosing his team, to pay some attention to the geography of the United States, and to take into account the desirability of appointing a person whose choice gives satisfaction to the members of an important religious denomination. But, as with the Truman Cabinet, many of its members may be chosen on personal grounds such as friendship with the President. They may have little or no important political experience, like Mr. Snyder the present Secretary of the Treasury; and there have been few, if any, Cabinets the composition of which has remained unchanged throughout a Presidential term of office. It is even possible that a Cabinet Minister may come to national attention for the first time when he is appointed; and he may return to the obscurity of private life when his term of office is over. A Cabinet officer need not be a member of the President's own party when first appointed; Mr. Roosevelt selected Mr. Harold Ickes and Mr. Henry Wallace, though both were Progressive Republicans before their choice, and Mr. H. L. Stimson and Colonel Knox were both well-known Republicans, of honourable record but of conservative outlook, when they joined Mr. Roosevelt, amid much criticism, after the outbreak of the second world war. Mr. Chief Justice Stone, though a Republican, and a fellow student of Mr. Coolidge, had lost sight of Mr. Coolidge for many years when the President made him Attorney-General in 1928. He really knew little of his Presidential chief when he accepted the post; and he hardly knew more when the President retired, possibly against his will, in favour of Mr. Hoover in 1928-9. The degree to which the President rules his Cabinet is literally overwhelming; but, given the separation of powers, it is far from easy to see that the method could operate in any other way. Certainly it is true to say that attempts to put the Cabinet in Congress would altogether alter the place and the prestige the President holds.

He is the master of his Cabinet; but his relations with Congress are on a very different footing. It is obvious that the system makes for a certain rivalry between them, which is clear when they differ, even when the President's party has a

majority in both Houses, and may well be disastrous if that party is in a minority. It is not unfair to say that the chairmen of the major committees in each House, especially in the Senate, can go far towards wrecking Presidential policy, above all, of course, when the President's party is in a minority there. That was shown in the famous conflict of 1919 between Woodrow Wilson and Senator Henry Cabot Lodge over the Treaty of Versailles; and it was shown again in the relations between President Truman and the Republican-dominated Congress of 1946. The President, indeed, may have a majority in both Houses, and be unable to secure the acceptance of his policy; that happened to Mr. Roosevelt in 1937 over his plan for the reform of the federal judiciary; and it has been the fate of President Truman in his effort to secure the repeal of the Taft-Hartley Act and to push through legislation which would prevent the conscious invasion of Negro rights in the Southern states. Mr. Roosevelt was defeated because, unusually for him, he had failed before he secured the introduction of his measure to organize a determined public opinion on his side against which Congress was not prepared to give battle. President Truman was beaten because an American political party is always a loose amalgamation of interests which may easily split into dissident groups once an issue of special sectional importance is under consideration.

It is, indeed, impossible to predict what the relations will be between the President and his Congress. Partly it is a matter of his personality and, here, not least, of his skill in mobilizing the public against opposition to his measures. Partly, also, the time-factor is important. Most Presidents can count upon some months of what is called the "honeymoon" period; and a wise President can always do a good deal if he uses his patronage effectively, and if he knows how to handle with delicacy and tact the susceptibilities of Senators and Congressmen—particular of the former. But his power to discipline, and their openness to persuasion, are always affected by the two vital facts that there is a Congressional election every two years at which the whole of the House and one-third of the Senate must submit itself to the popular choice; and he him-

self can never forget that, shortly after he enters the White House, he must begin to lay his plans, at least in the normal case, to make sure of his nomination for a second term. No doubt if he wants a second nomination, he can have it; a party which repudiates its own leader is always in a weak position. That was what made Mr. Truman's election in 1948 so remarkable; for though the Democratic Party renominated him, a part of the South so far repudiated him as to nominate a second Democratic candidate, and so few of the remaining Democratic leaders believed he had any chance of victory that he had almost wholly to rely on his own exertions in the campaign. And all but the most outstanding Presidents have two further difficulties to confront. There are Congressional leaders with long experience of Washington before he was elected, and the knowledge that they will remain there long after he has departed; men like Henry Clay, or John C. Calhoun, or William E. Borah hardly hesitated to assume that they were entitled to treat with the President from an equal eminence. "There are always" said Calvin Coolidge, "ninety-six men at the other end of Pennsylvania Avenue who believe they can do better what needs to be done than the man in the White House is doing it." Nor must one forget the pathos of a President who feels that he is living in the shadow of his predecessor, above all when the latter is a member of his own party. A large part of William Howard Taft's Presidency was made a burden for him by his fears of what Theodore Roosevelt might say or do; it is indeed, hardly unfair to suggest that, in those four years, by far the happiest months President Taft enjoyed were those at the beginning of his tenure of the office when Theodore Roosevelt was seeking consolation for his departure from the White House in his famous "big-game" shooting tour of Africa, with its splendid climax of avuncular advice to Kaiser Wilhelm II, and to the British people in his solemn admonitions to them in London and in Oxford.

A word is perhaps desirable upon the effect of national crisis on the President's position. It may be fairly said in this regard that while the crisis lasts the powers of the President are almost as great as those he chooses to demand and

exercise. Internally, that can be seen from Andrew Jackson's famous struggle with the Bank of the United States, and from the overwhelming authority Franklin Roosevelt exercised in the panic of the depression which swept America when he took office on March 4th, 1933. When war is involved, the President's mastery can hardly be effectively challenged. For all the determination of Congress to share the direction of the Civil War with Lincoln through the Committee it appointed for that purpose, the effective power was always in his hands while he lived; and it is by no means excessive to describe Woodrow Wilson and Franklin Roosevelt as virtually dictators by consent in the two world wars which were waged during their respective periods of office. But just as in nature action and reaction are equal, it tends to be true that after the experience of the immense authority a crisis centralizes in the President's hands, with its close the pendulum of power tends to swing away from him to Congress. After Jefferson, the focal point of government was in Congress until the reign of Andrew Jackson, as, after Jackson, it largely reverted to Congress until the Civil War. After Lincoln, there was no really strong President until Theodore Roosevelt; and, after Woodrow Wilson's second term, which almost coincided with the entry of the United States into the first world war, there was no resolute President until the entry of Franklin Roosevelt into the White House. It should, indeed, be added that crisis of itself does not necessarily make a strong President; for there are few spectacles in American history more tragic than the weak fumbling of Buchanan as he watched helplessly the organization of the forces which led to civil war through a movement towards secession he did not know how to arrest.

The fact is that great leadership of a positive kind must, under the American system, come from the President or it will not count at all. No one else can command the necessary attention; and no one else can secure the appropriate authority. The Congress can give or deny support; it is not made, by its inherent institutional nature, to take the initiative. No Cabinet has the status necessary to force a weak man to become a strong one; and though the Supreme Court is profoundly



influenced by its political environment, the nature of its functions confines it to interstitial pronouncements upon the decisions of other men. Nor can the most powerful of private citizens hope to do more than bring great pressure to bear upon the President to give a lead. Men of the highest distinction were closely associated with George Washington during his two terms of office. We know with what eagerness both Jefferson and Hamilton urged upon him the direction he should follow; nevertheless the decisive choice was always a choice that Washington made. Seward's standing in the Republican Party was so much higher than Lincoln's in 1860 that he did not doubt that he would be the Mayor of the Palace under a merely nominal King; within a few weeks, he had learned that the office combined with the personality of Lincoln to make the latter his unchallengeable master. When weak men like Franklin Pierce or Warren G. Harding were in office, no one could fill the vacuum left by their inability to lead. Crisis apart, it may well be true that until America had reached the frontier, the periods in which no President sought to lead it were not a cause of serious set-back. But it may be argued with confidence today that a United States without leadership in so interdependent a world might well imperil not only its own fortunes but that of all Powers associated with its purposes; and that if it chooses as President (or, indeed, since death takes a heavy toll from those who win the supreme office the American people can confer, the Vice-President also) a man who fears to act with audacity and resolution, it skirts the boundaries of great dangers it may then, with all its strength and resources, lack the power to overcome. Great leadership is not an automatic gift of nature to a people which has need of it; the institutions and traditions of a country must be carefully prepared to secure its evocation.

There is perhaps one other remark it is worth while making. In the eighth chapter of his classic *The American Commonwealth*, Lord Bryce discussed the reasons "why great men are not chosen Presidents". He thought that fewer really able men were drawn into American politics than into European. He thought American political life gave fewer opportunities

than Europe to high distinctions, and that the mediocre candidate with a safe record was better regarded than the man who was original or profound. He did not, indeed, believe that the Presidency required a man of "brilliant intellectual gifts"; "four-fifths of his work", Bryce wrote, "is the same in kind as that which devolves on the chairman of a commercial company or the manager of a railway, the work of choosing good subordinates, seeing that they attend to their business, and taking a sound practical view of such administrative questions as require his decision." *Ceteris paribus*, he thought the candidate should come from a large state, the allegiance of which was in doubt, that it was undesirable for him to be a Roman Catholic or an infidel, and that the successful soldier in the Civil War, like Grant, was helped by his military reputation even if he had no experience in politics. Comparing the twenty Presidents of the United States and the twenty Prime Ministers of Great Britain in the years between 1789 and 1900, he regarded eight Presidents and six Prime Ministers as personally insignificant, while he put only four Presidents, Washington, Jefferson, Lincoln and Grant, in a "front rank represented in the English list by seven or possibly eight names." "The natural selection of the English parliamentary system", he concluded, "even as modified by the aristocratic habits of that country, had more tendency to bring the highest gifts to the highest place than the more artificial selection of America."

Bryce's book was first published in 1888, in the Presidency of Grover Cleveland, when the first great wave of indignation against the practices of the "gilded age" was beginning to crystallize into a system of genuine principles. What he wrote about the barriers against the choice of a Roman Catholic, an infidel, or the citizen of a small state is still justified. But it is at least arguable that his whole case was falsely grounded, and if we make a numerical comparison between great American Presidents between Washington and Franklin Roosevelt, and great British Prime Ministers between the younger Pitt and Mr. Churchill, the advantage is as much on the American as on the British side. It must be noted that we

do not know the "seven or possibly eight names" among British Prime Ministers whom Bryce placed in the front rank; and while it is true that Grant was a very successful soldier, that no more entitles him to a place among great Presidents than his remarkable military campaigns entitle Wellington to a place among great Prime Ministers. It is obvious that he did not regard great leadership as a Presidential function; it was probably the mental climate of the time that made him suggest that a good President could do his job with the same qualities that made a man a good chairman of a large commercial company. He emphasized the need for honesty with great vigour, no doubt because, before 1900, most of his visits to the United States were made in a period of grave and profound corruption which left neither Congress nor even the President untainted. But it is difficult not to conclude that Bryce's conception of the "front rank" was, Lincoln apart, formed from the pattern of the "scholar and the gentleman" who, because of the special British traditions into which he himself was born, mostly occupied the two front benches in both Houses of Parliament.

Yet in the sixty years since he wrote, many of his major conceptions may be said to have become outmoded by the larger historical perspective in which they can now be set. Most people would agree that, between 1789 and 1945, the great Prime Ministers were Pitt, Peel, possibly Palmerston, Disraeli, Gladstone, Lloyd George, and Churchill—at most seven names, two, at least, of whom were not "scholars and gentlemen", in Bryce's sense of the phrase. In the same period in the United States, it would be now generally agreed that Washington, Jefferson, Andrew Jackson, Lincoln, Theodore Roosevelt, Woodrow Wilson, and Franklin Roosevelt, were quite certainly in Bryce's "front rank", whatever the criterion by which he made that choice. If we move from the front rank to the second, with men like Monroe and John Quincy Adams, Tyler (whom Bryce much underestimates), Cleveland, Taft, and, perhaps, James Madison, we have men who compare favourably with Lord John Russell, Salisbury, Balfour, Campbell-Bannerman and Asquith,

who are hardly their superiors. It is, no doubt, true that remarkable men like Clay and Calhoun and Webster, all missed the Presidency when contemporaries of far less ability attained it; but in each case their failure is explicable in terms of defect of character that, on the whole, is a tribute to the delegates who decided against them. And an Englishman, in any case, ought to remember that Fox and Burke, Brougham and Cairns, Cobden and Joseph Chamberlain, Harcourt and Morley, were all of them outdistanced in the race for leadership by men of lower capacity. Nor is it without significance that if "artificial selection" in the United States excluded Clay and Calhoun and Webster, what Bryce calls "natural selection" in Great Britain also excluded Lord Randolph Churchill and the great Irish leader, Parnell, from the influence that should have been theirs. And if men of such poor capacity as Franklin Pierce and Warren Harding became Presidents, Great Britain has little reason to be proud of Prime Ministers like Lord Goderich and Neville Chamberlain.

All in all, the United States has thus far been fortunate in that, in most of its great crises, circumstances have combined to procure for its citizens a man proportionate to their problems. That need not, of course, be the case; and the working of the system points to nothing so much as the urgent necessity to make it as probable as human foresight can offer assurance that the pressure to choose the compromise candidates is replaced by an equal pressure to make the road direct to the choice of candidates whose power to lead has been shown by performance, and not inferred from the half-hidden obscurities of dubious manoeuvre. The immense power of the American people makes great Presidents more continuously necessary to its destiny than at any previous time. There is no other security that its massive strength will be employed with the wisdom and the insight proportionate to its historic responsibility.

## THE RELATION OF THE PRESIDENT TO CONGRESS

by WILFRED E. BINKLEY

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THE relation of the President to Congress, though never static, has been conditioned by deep-seated and persistent forces throughout American political history. The Executive as an organ of government got off to a bad start in the colonial period where it originated in the office of the colonial governor. All too often the King treated the appointment of this official as royal patronage to be dispensed to some court favourite. So lucrative indeed were the perquisites of the office that an appointment was considered a means of mending a broken fortune and to make matters worse, from the point of view of the colonists, the appointee frequently remained in England enjoying the emoluments of the office while a lieutenant-governor performed his functions in the colony. Here was a situation that intensified the habitual vigour of the colonial assembly's check upon what they considered potential executive despotism and they missed no opportunity to trim the governor's powers.

Even the governor's salary depended upon appropriation by the colonial legislature and he was consequently compelled to come to terms with the legislators at the same time that he struggled, as best he could, to execute his royal commission as governor. So he was reduced practically to the necessity of coming, hat in hand, to the door of the legislature begging for funds to carry out his duties and legislatures drove many a hard bargain with him. Indeed legislatures developed such habits as prescribing minutely detailed statutory provisions, by-passing the Governor by assigning the execution of laws to administrative commissions, and even circumventing the governor's appointing power by appropriating salaries, not to

the offices, but to named persons. No wonder, it has been said, that the American Revolution was over twenty-five years before Lexington.

A consequence of colonial experience was the conviction that political power, particularly executive power, is so dangerous that it must be checked with power. Early Americans would have reached this conclusion if they had never heard of Montesquieu but, if philosophy is to provide us good reasons for what we want to do anyhow, then *The Spirit of Laws* was made to order for the Founding Fathers. Suffice it to say that a deep-seated suspicion that implicit tyranny lurks in the executive office was planted early and persists to this very day in the American tradition, complicating the problem of integrating the determination of public policy with its execution.

So persistent are habits of mind that when the colonies, during the Revolution, made the transition to states, despite the powers with which the Governor was invested, that official became so subservient to the legislature that Madison, in the *Federalist* papers, declared the governors to be mere "ciphers" while the legislatures were "omnipotent". So obnoxious had the very term "Governor" become, as a consequence of colonial experience, that four states had discarded it and substituted the title "President". The framers of the federal Constitution in 1787, in creating the federal Executive, synthesized and fortified the provisions of several state constitutions for their executives with the consequence that the President of the United States, historically considered, is a sort of glorified state governor. This certainly did not extirpate the traditional legislative suspicion of the Executive. Just as the Speaker of the colonial assembly considered himself the people's champion in defying the Governor, so the speaker of the state legislature and in turn the speaker of the national House of Representatives confronts the Executive as the assumed guardian of the people's interest. It is no accident that, despite the "dethronement" of the Speaker of the National House of Representatives a generation ago, that official stands today second only to the President in political power.

Historically then the President and Congress have been cast for opposite parts. Even without this there are unplanned configurations of usages that have tended to prevent the development of any such congruence of legislature and executive as obtains in a parliamentary system. The American Constitution, by assigning distinct functions to President and Congress, implied, while it did not specifically prescribe, separation of powers. The first Secretary of the Treasury, Alexander Hamilton, and his fellow department heads assumed that, like parliamentary ministers, they would propose and promote legislative measures in person on the floors of the Houses. But the prompt passage of an apparently innocent resolution requiring that they "report in writing" initiated a precedent unbroken to this day. The consequence was, as Joseph Story, an early justice of the Supreme Court observed over a century ago: "The Executive is compelled to resort to secret and unseen influences, to private interviews, and private arrangements, to accomplish his own appropriate purposes instead of proposing and sustaining his own duties and measures by a bold and manly appeal to the nation in the face of its representatives."

The Constitution provided for the election of the President by assemblies of notables meeting in each state to be selected by whatever method state legislatures might prescribe and casting their votes blindly without formal nominations. The unexpected emergence of a two-party system with definite candidates soon converted these Presidential Electors into automata, mere registrants of their party's choice of Presidential candidates. Moreover, in time, the democratic trend compelled state legislatures to prescribe the popular election in each state of its Presidential Electors and thus the President has come to be practically the popular choice of the entire American electorate. In this way a compelling usage utterly changed the intended method of electing the President. But this almost direct election strengthened the President's hand and made Congress more suspicious of him than ever—at the same time that it tended to set him over against it.

Another usage that soon hardened into statutory pre-

scriptions affects profoundly the President's obligation to certain groups. This is the fact that each state elects its Presidential Electors on a general ticket and not by districts. Consequently the contest for Presidential Electors in each state becomes for each party a game of all or none. Since each state's number of Presidential Electors is roughly proportionate to its population, the big blocks of electoral votes of the populous states become the grand stakes for which Presidential candidates bid. All these large states have metropolitan centres with conscious ethnic, religious, and economic minorities each capable of swinging enormous electoral weights to either party. Among other things, this metropolitan vote is consumer-conscious rather than production-conscious and reacts accordingly toward pertinent issues such as rent and price controls and social security. Franklin Roosevelt could not have been re-elected in 1940 and 1944 without this metropolitan vote which simply swamped Governor Dewey's big majorities outside the great cities in half a dozen states that threw their great Electoral College ballots to Roosevelt.

The Great Depression had given Franklin Roosevelt his grand opportunity to vitalize the voting potentiality of hitherto dormant elements in the American population, especially the lower income groups. Since his advent no Presidential candidate of any party dare ignore the "have nots". It is no accident that all major party Presidential candidates since the 1930's have been outspoken proponents of civil rights, social security, and collective bargaining by labour. Presidential campaigns have consequently become literally competitions between candidates to outbid each other for the votes of the metropolitan masses who hold the balance of voting power in the states with the decisive Electoral College votes. At present and in the foreseeable future no candidate can hope to attain the Presidency without having pledged himself to the promotion of the welfare state.

The Congress of the United States is so constituted and so functions as to collide head-on with the major items of the only kind of programme that can elect a President. This is due to a set of practices and usages rather than provisions of the



Constitution. The Constitution, of course, provides that a Representative must be a resident of the state that elects him but to this a pernicious usage has added the inflexible requirement that he be also a resident of the single-member district that elects him. This compels him to be extraordinarily obsequious to the dominant interests of his constituency no matter what the national welfare calls for. In a politically close district the life of a Congressman can be made almost intolerable by the threats of every minority group that holds a balance of voting power. Unlike a Member of Parliament the Member of Congress cannot hope, if defeated, to stand for election in another constituency. National party leadership, Presidential or other, cannot easily influence a Congressman shackled by such a usage.

National elections have a tendency to become contests between the consumer-conscious masses of metropolitan centres who can determine Presidential elections and the production-conscious interests strong in the metropolitan suburbs, the smaller cities, towns, villages, and countryside which elect most of the Members of Congress. Here the prevailing ideologies, and practices, and the usages within Congress itself distort the national representative system of both Senate and House so as to load the dice overwhelmingly against consumer interests. For example, the consumer demand for the maintenance of price controls in order to check inflation was doomed by the irresistible weight of the non-urban constituencies, and Truman's re-election in 1948 was partly due to his vigorous stressing of this issue in condemning the Eightieth Congress. It was the intention of the Constitution that after each decennial reapportionment of representatives from each state the state legislatures would re-map the Congressional districts so as to maintain equal populations in each. But the legislatures, even in many industrial states, are controlled by farmers with the consequence that re-mapping Congressional districts is delayed, sometimes more than a generation. Meanwhile rapidly growing urban constituencies accumulate populations in some cases a dozen times as great as those of declining rural districts, which take on at least

a trace of the character of rotten boroughs. The effect is to overweight the production-minded representation in Congress as much as it reduces the fair weight of consumer representation.

There is another usage that loads the dice against consumers more heavily than anything else, at the same time that it makes party government in Congress a sheer impossibility. This is the use of seniority, that is, length of continuous service, as the sole determinant of the chairmanships of the standing committees. In contrast with the standing committees in the House of Commons each of those in the American Congress considers bills in a special area of legislation, and is in fact a little legislature with almost the power of life and death over any measures referred to it. Enormous prestige and influence attaches to the chairmanship of one of these committees. Since long continuous service determines the chairmanship it simply signifies that a chairman has been elected again and again without interruption and that he consequently represents practically a one-party district. The metropolitan districts on the contrary swing from one party to another frequently enough that their representatives seldom accumulate the continuous service necessary to attain a committee chairmanship. This means that, when the Democrats have a majority in the Houses, the sovereign power rests in the hands of conservative Southern Democrats. This is why the New Deal legislation practically ended with President Roosevelt's first term and why President Truman is helpless in his efforts to fulfill the pledges of the Democratic platform of 1948 on which he was elected, such as civil rights and repeal of the Taft-Hartley Law. When Republicans control the Houses the committee chairmen are mainly from non-metropolitan constituencies and consumers get as scant consideration in legislation as when the Democratic chairmen control.

The British parliamentary system, dependent as it is upon a set of well established British usages, is out of the question in the United States with its very different set of political usages. Yet, sooner or later, there must be found a better way of integrating the formulation and execution of public policies in the United States. Nor is a solution likely until a

way can be found for getting party government established at Washington. American political parties are little more than loose federations of state parties, integrated temporarily on a continental scale at four-year intervals by a brief paroxysm of campaigning to capture the patronage, prestige and power of the Presidency. Until the turn of the century the issues of the Civil War and its aftermath had given the major political parties the emotional drive of religious faiths. Republicans in tremulous tones proclaimed the conviction: "The party that saved the nation must rule it", while Democrats vehemently defended the powers reserved to the states by the Constitution of the Fathers. But the emotional drive of a living faith evaporated long ago with the consequence that when asked his political affiliation, many a voter replies: "I have no party: I always vote for the best man." Participation in caucuses and other party activities is discountenanced and the Institute of Public Opinion recently found a majority of American parents saying they would not want their children to enter politics. The cult of non-partisanship, which unfortunately includes too many political scientists, has resulted in the introduction of the non-partisan ballot. It must be confessed, however, that politicians and voters circumvent quite generally the efforts to abolish party contests by statutory provisions for non-partisan ballots.

The anti-party ideology is none the less potent and makes difficult the establishment of party government which is a *sine qua non* of effective democracy. The American Political Science Association has recognized the importance of this problem by establishing a standing Committee on Political Parties "with a view to suggesting changes that might enable the parties and voters to fulfil their responsibilities more effectively". The chairman of the committee, Professor E. E. Schattschneider, doubtless expressing an emerging committee consensus, concludes: "Once members of Congress, the President, and the higher executive personnel appreciate the advantages of cohesion, it is likely that they will find ways of establishing it" and he believes that "the party which first masters the technique of cohesion will have a phenomenal political success".

Doubtless the time will come when the Democratic party will have to crack down on such party secessionists as the Dixiecrats who organized a party to prevent the re-election of President Truman. Surely such saboteurs cannot hope continuously to enjoy party patronage and the chairmanships of the great committees that empower them to wreck the party platform and the President's programme. The Republicans in the Eightieth Congress, which immediately preceded the present one, attained, at times, an astonishing cohesion under Speaker Joseph Martin. It had long been assumed that the Congressional revolt of 1910 which "dethroned" the Speaker by depriving him of the power to appoint the committees and by removing him from the Rules Committee which decides which measures get before the House had decisively emasculated the speakership. But Speaker Joseph Martin may have been as masterful in 1948 as Speaker Joseph Cannon was forty years ago. Otherwise why were there in the Eightieth Congress only three Republican votes against the red hot Wolcott Housing Bill to 236 Republican votes for it and wherefore the absolute unanimity of 236 Republican votes against sending the controversial Knutson tax bill back to committee? Cannon never had more perfect party regimentation. Now and then a recalcitrant Republican Representative may be privately reminded by the Speaker that the party's national campaign funds are available to retire him by financing a rival candidate of his own party at the next nominating primaries. A Member of Parliament would understand such a warning. The cry of dictatorship may be raised against such a Speaker, but Americans must learn that there can be no party government without party discipline. The Republicans may be approaching it in the House of Representatives.

There is a pronounced trend in Congress toward looking to administrative agencies for the initiation and shaping of measures for the consideration of the committees. George B. Galloway says that half the bills now originate in the executive departments. Whenever President Franklin Roosevelt made a recommendation, Congress learned to expect a bill with the last "t" crossed lying right under the message. At first Republi-

cans stormed at such executive presumption, but so accustomed had they become to the practice that in 1947 a leading Republican Senator, Homer Ferguson, criticized President Truman for making an informal suggestion of a measure without sending a message accompanied by a bill.

The co-ordination of the Executive and Congress may yet be institutionalized by the creation of a Legislative-Executive Council. It could consist of Congressional leaders and members of the President's Cabinet. An emerging consensus points to such a development which would violate no essential American tradition and would require no constitutional amendment. The idea of such an organ in the national government was first suggested by Senator Robert M. LaFollette in the July, 1943, issue of the *Atlantic Monthly*. His State of Wisconsin had such a council as early as 1931. The LaFollette-Monroney Congressional Reorganization Act of 1946 contained a provision for a joint Legislative-Executive Council when the measure passed the Senate. It is believed that its elimination by the Lower House was due to the influence of the Speaker who probably thought his power might be reduced by it. Its defeat was a keen disappointment to American scholars in the field of politics. The Council could be created by a joint resolution of the two Houses and an Executive Order of the President. Its membership probably ought to consist of the Vice-President, the Speaker of the House, the majority party floor leaders of the two Houses, chairmen of major committees, and designated Cabinet members. Meetings should be held regularly for consideration of the formulation and the execution of national policies. The Council might be held responsible for the setting up of the legislative programme in consultation with the President. Its success would depend, however, as in the case of every governmental device, upon the usages that developed in connection with it.

## THE AMERICAN CABINET

by FREDERIC A. OGG

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IN *The American Commonwealth*, published in 1888—the first book in which the governmental system of the United States was ever fully and adequately described—James (later Lord) Bryce truly observed that in America there was “no such thing as a cabinet in the English sense of the term”; and then, recognizing that the term had no less currency in the United States than in his own country, he devoted a ten-page chapter principally to discussing what the American Cabinet was not rather than what it was. That he clearly understood the situation was evidenced by his characterization of the American Cabinet as, like the English, a product of custom rather than of law, and especially by his sage observation that “one cannot properly talk of the cabinet apart from the President”. For in the American “Presidential” system, a cardinal principle is the concentration of the executive power—all executive power—in the President, with the Cabinet, as such, having neither being nor function except as drawn from that high official. Since Lord Bryce wrote, however—and particularly in the past twenty years—the most conspicuous development in American government has been the tremendous growth of the Presidency in prestige and power; and with this has come increased importance for every agency—the executive departments, establishments like the Bureau of the Budget gathered under the broad roof of the lately developed Executive Office of the President, the Civil Service, and indeed the Congress. Even the Cabinet, although hardly to be regarded as an instrument of power, has been pulled upward to a higher level of significance. And although one writing for readers to whom “Cabinet” means what it normally means in England cannot wholly

avoid Lord Bryce's somewhat negative approach, it may be possible to present a somewhat more direct and positive picture of what the American Cabinet is to-day, how it functions, the uses it serves, and the ways in which some people propose to modify and strengthen it.

Framers of the American Constitution in 1787 were, of course, familiar with the English Cabinet as it then stood and certainly with governors' councils as found in all of the states. From the outset, however, their eyes were fixed on a system of separated powers leaving no room for a Cabinet of the English sort; and although many plans were advanced for associating with the President a council of some description, no one of the number prevailed. That future Presidents would stand in need of advice was well enough understood; and on matters relating to individual executive departments they were expressly authorized to "require the opinion, in writing", of the appropriate department head. For advice on more general lines, however, it was expected that they would rely principally on the Senate which, starting with only twenty-six members and already constitutionally associated with the President in appointments and treaty-making, would serve the dual purpose of a legislative branch and an executive council.

Matters, however, did not work out in this way. On the very first occasion when President Washington presented himself in the Senate to consult on public business, the demeanour of the members clearly showed that they took a different view of their functions; and the expected relationship did not develop. In another direction, too, the President was rebuffed, when, seeking from the new Supreme Court its opinion on certain constitutional issues, the reply was that the judges could render such opinions only in deciding actual cases. At the same time, the House of Representatives was making it perfectly plain that heads of executive departments were not welcome on the floor of that body for presenting reports, answering questions, or indeed for any other purpose. The all-round effect of these various reactions was, of course, to throw the President and his department chiefs

back upon their own resources and into greater mutual dependence than otherwise might have arisen; and out of this, in very large measure, arose the Cabinet. From as early as 1791, there are scattered records of meetings of the President with his department chiefs; and in 1793, the danger of foreign war caused such consultations to grow more frequent and even regular. In this latter year also, the term "Cabinet" began coming into use, although President Washington himself seems never to have employed it.

From the period indicated to the present, the American Cabinet, such as it is, has had a continuous history. There have been ups and downs—strong Cabinets and weak ones, periods of eclipse while Presidents looked elsewhere for advice; and (never referred to in a Presidential message until 1829 or indeed in a statute until 1907) the agency remains to this day so purely a matter of custom that if some President should decide to dispense with it altogether (as one or two Presidents in effect have done for brief periods), not a constitutional or legal question could be raised concerning his right to do so. As indicated below, various other persons have at times been, and are to-day, invited to be present at Cabinet meetings; but, viewed strictly, the body has always consisted simply of department heads sitting under the chairmanship of the President. Starting at three in 1789, departments (all created by act of Congress and essentially co-ordinate) grew to ten in 1913, when a Department of Commerce and Labour was divided into two. More recently the situation has been modified somewhat by the National Military Establishment being turned into a Department of Defence with a Secretary in the Cabinet, while the Secretaries of the Army, the Navy, and the Air Force, although heading "departments", have dropped out of the Cabinet circle; also, proposals are pending for the creation of one or two new departments, whose heads would without doubt be of Cabinet rank.

In any event, the Cabinet as of to-day consists of the Secretary of State, the Secretary of Defence, the Secretary of the Treasury, the Secretary of Commerce, the Secretary of Labour, the Secretary of the Interior, the Secretary of



Agriculture, the Postmaster-General, and the Attorney-General, the last-mentioned heading an integrated Department of Justice such as has often been proposed for Great Britain but never actually introduced. Various department chiefs familiar in European countries, *e.g.*, ministers of colonies, education, public works, and home affairs, find no counterparts in the list—not because the functions are not in most instances provided for, but because for varying reasons they are not devolved upon separate, co-ordinate departments. The fact may be reiterated that, although departments exist only by Congressional act, their heads (and therefore all regular Cabinet members) are in every case appointed by the President, with the consent of the Senate, and also in every case responsible only to the President, who may independently remove them if and when he chooses. All are on a general footing of equality, although because of the critical nature of his tasks, the Secretary of State enjoys a certain extra-legal pre-eminence; and under legislation of 1947 he tops the list of department heads who, in a prescribed order, follow the Vice-President, Speaker of the House of Representatives, and President *pro tempore* of the Senate as mid-term successor to a deceased, incapacitated, or removed President.

Before turning to the Cabinet's functioning and influence, it may be of interest to glance at various factors entering into the selection of its members. Save for the necessity of securing Senatorial confirmation for his nominees (by simple majority vote), the President's freedom of choice is constitutionally complete; and the limitation mentioned is in practice so slight that in over 160 years only seven names offered have ever been rejected. With department heads constituting the President's official family, and with him accountable for all their official acts, it is recognized as only fair that he be left unrestricted in selecting them, regardless of whether he and his nominees are or are not of the party dominant at the given time in the Senate. But this does not mean that in making his choices, when constructing a new Cabinet at the beginning of his administration or when filling vacancies

as they arise, he will not have to bear in mind, and more or less be guided by, many different, and perhaps troublesome, practical considerations.

First of all is the need for party solidarity. With no organized parties in the field, President Washington started off with the rather natural idea of giving representation to opposing schools of political opinion, and to that end included in his original Cabinet both Alexander Hamilton and Thomas Jefferson. The plan, however, did not work, and, with political parties presently coming into the field against each other, even the Washington Cabinet ended by becoming solidly Hamiltonian, or "Federalist". Jefferson's entrance of the new White House in 1801 saw a complete shift to Republicans; and from that time onward it always could be taken for granted that an incoming President would construct his Cabinet entirely from members of his own party. In scattered instances, to be sure, personal or other special considerations have led to the inclusion of an outsider or two: President Cleveland, a Democrat, appointed as Secretary of State a man who had even been thought of as a Republican candidate for the Presidency; Presidents Theodore Roosevelt and Taft, Republicans, appointed Democratic Secretaries of War; and in the face of an increasingly menacing international situation, President Franklin D. Roosevelt, in 1940, drew into his Cabinet circle, as Secretaries of War and Navy, respectively, two well-known Republicans—one (Henry L. Stimson) not previously active in partisan affairs, but the other (Frank Knox) only four years previously the candidate of his party for the Vice-Presidency.

Other practical considerations more or less influencing the President's choices include representation for various wings or factions of his party, geographical distribution, obligations incurred for political support, and personal friendship. To conciliate and ensure support from the more radical wing of his party, President Wilson, in 1913, made William Jennings Bryan his Secretary of State; and although actually resulting in what has been characterized as "the most uncongenial and contentious group ever assembled

beneath the White House roof", President Lincoln, in 1861, made an effort, at least, to win harmonious backing for his Administration by giving Cabinet representation to as many as possible of the discordant elements embraced in the then young Republican party. Geography, too, must be kept in mind. It will not do to take all appointees from the East, or from the West, or from any other single section of the country—although occasionally there have been two, or even three, from the same state (most often New York). Selections must frequently be made, also, with a view to rewarding individuals (or groups behind them) who have aided conspicuously in the President's election—perchance as chairman of the victorious party's national committee, as in the case of Will H. Hays and James A. Farley. Still another influential factor is personal association and friendship. Every President takes into his official family men whom he knows but slightly; but he is likely to include also one or two who, whatever other claims they may have, are first of all personal friends.

Cabinet members have, of course, the dual function of administering an executive department and sharing in advising the President; and presumably they are selected with both in mind. In their administrative capacity, at least, they have, over the years, most commonly been amateurs, in the sense of not having had experience in or with the department over which they are called to preside; and in this, they have much in common with the general run of Ministers of the Crown in Britain. In choosing them, the President, however, has a rather wider range of choice than a British Prime Minister enjoys; because, whereas the latter ordinarily must select only from among parliamentary members of his party, and from actual or potential party leaders, American Cabinet members not only must come from outside rather than inside the Congress, but are not ordinarily expected to be party leaders at all. Speaking broadly, in fact, the American Cabinet has tended to become less and less a group of party leaders; half or more of the members of almost every recent Cabinet had never, when chosen, been active in the politics of either state or nation. Politicians

have been included, of course; but a steadily increasing proportion of Cabinet appointees have been chosen (with factors mentioned above playing their part) for their experience or their administrative ability (proved or presumed), though, as indicated, not usually in the Department to which they are assigned, or even necessarily in public life at all. Many have attained eminence in the business or professional world—outstanding illustrations in the past thirty or forty years being Elihu Root, Andrew W. Mellon, William G. McAdoo, and Herbert Hoover. An incoming President rarely carries over any members of the Cabinet of his predecessor, even when of the same party; and although a President suddenly brought into office by the death of his superior naturally makes few, if any, Cabinet changes immediately, he usually will be found reconstructing the group to his own satisfaction within a decent period of time—four of President Roosevelt's appointees dropping out before President Truman, in 1945, had been in office a month and a half, and all of the remaining ones disappearing (in some instances by their own choice) within but little over a year.

It was, of course, out of the early formed habit of department heads coming together for discussions with the President that the Cabinet arose; and the Cabinet *meeting* is still the most visible evidence of the institution's existence. Nowadays, the body convenes around a large oval table in a room in the White House set apart for the purpose; with the President at the middle and the members flanking him in the order of seniority; and meetings (frequently attended by the Vice-President and any other high administrative officials whom the President may invite) take place ordinarily once a week—now on Fridays—though naturally oftener in time of war or other stress. Ranging widely over problems and policies of the Administration (not omitting their party aspects), discussions are directed mainly to matters, large or small, which the President himself introduces, although others may be brought up—usually with consent secured in advance—by the department chiefs. The atmosphere of meetings varies a good deal under different Presidents. Under Franklin

D. Roosevelt, they were likely to be long and leisurely (often two hours), with everyone allowed opportunity to say what was on his mind, though with the President sometimes more or less monopolizing the time, and often largely with stories of the past. Under President Truman, they are more crisp, with the Chief Executive sometimes obviously watching the clock. In any event, proceedings are decidedly informal. There are no rules of debate; free interchange of opinion takes place in a conversational manner; only rarely is there a vote; as in the British Cabinet before World War I, no minutes or other official records are kept, and sometimes differences of opinion develop as to how a given matter was disposed of or even whether it was considered at all. Furthermore, such decisions as are reached are mere recommendations. The American Cabinet is not a *government* as is the British; and just as the President is free to submit or not submit any given matter for consideration, so is he free to make any final disposition of it that he chooses. Ordinarily, he will be influenced by the views of the men whom he has chosen to be his official advisers. But if he thinks their advice unsound, he is under no compulsion to follow it. It is he, not they, who will have to bear ultimate responsibility before the country for whatever is done or not done. "Seven nays, one aye—the ayes have it," announced President Lincoln following a Cabinet consultation in which he found every member against him. Cabinet discussions bring out useful information and opinion, clarify views, and promote morale in the Administration. They help the President pick his course in both domestic and international affairs. But they do not culminate in decisions upon policy by mere show of hands.

Throughout the country's history, there have been strong Cabinets and mediocre ones, with the mediocre undoubtedly preponderating. An able Cabinet can go far toward making up for the deficiencies of a weak President, and can lend added strength to a strong one. But for one reason or another most Presidents do not command the services of more than a rather ordinary Cabinet group. Furthermore, some Presidents

make a good deal more use of their Cabinet than do others. Looking upon the heads of departments as simply administrative officers, and preferring the advice of a coterie of personal friends, official or otherwise—the so-called “Kitchen Cabinet”—President Jackson early abandoned meetings of the regular Cabinet altogether; and some of his successors, *e.g.*, President Grant, much of the time President Wilson, and in his first years President Franklin D. Roosevelt, leaned but lightly on their Cabinet advisers. In the case of Roosevelt, the Cabinet, in the depth of the depression, was from one side quite submerged in a sort of super-Cabinet, known as the National Emergency Council and consisting, in addition to the heads of departments, of some two dozen heads of new “recovery” agencies; and from a different direction was pushed into the background by a so-called “little Cabinet” consisting of the well-known “brains-trusters”. In time, the regular Cabinet emerged in something like its customary stature. But almost to the end, some of Roosevelt’s principal advisers held no Cabinet posts at all; and even as bold and contentious a project as the 1937 plan for reorganization of the Supreme Court went to the Cabinet only as an eleventh-hour announcement of a decision already made. On the other hand, certain Presidents, *e.g.*, Pierce and Harding, have consulted their Cabinets at every turn and have usually followed the advice received.

British readers, accustomed to look sceptically, if not disapprovingly, upon the separation of powers so basic to the American system, will not be surprised to learn that the topmost objective in present-day efforts to improve the country’s national government is closer and more effective relations between the executive and legislative branches, still tending to occupy “two islands of separate and jealous power”, with resulting delays, deadlocks, weak compromises, and divided responsibility. And the Cabinet comes into the discussion in a number of ways. One of the mildest proposals, heard for decades past, is to give Cabinet members the privilege of the floor in both branches of Congress, not as members or with votes, but merely to afford opportunity

for giving information, answering questions, and engaging in general debate. So modest a step in the direction of a Cabinet system would call for nothing more than possibly some slight revision of the rules of the two Houses. But there is no present prospect that it will be taken; appearance of department heads before Congressional committees, now common enough, is generally regarded as sufficient. A second suggestion is that the two branches be more effectively tied together through the medium of a joint legislative-executive Council or Cabinet, in which some specified number of Congressional leaders (including committee chairmen) would be joined with the present Cabinet, or some portion of it, for discussion of policy and harmonizing of interests. The Joint Committee on the Organization of Congress which prepared the way for the important Reorganization Act of 1946 recommended this; but though the Senate approved, the House of Representatives did not agree.

Finally, it is, of course, not to be overlooked that proposals are heard for scrapping the separation of powers completely and frankly going over to something like the British Cabinet system. Such suggestions come, however, only from occasional writers of books (most commonly journalists) and now and then from professional students and teachers of political science, who, however, are more likely to confine themselves to extolling the virtues of Cabinet government where it at present prevails, but warning that it might not work as well in a country like the United States with different traditions. Neither in government circles nor among the people at large is there any idea that so sharp a break with the American past is feasible or necessarily desirable. In one or two of the ways referred to, the American Cabinet's usefulness in policy formation, and even in the legislative process, may in time be increased. But so long as the Presidency remains what it is, no possible room will be afforded for the group to become a *government*; and we have the word of one of our ablest constitutional lawyers for it that "the power and prestige of the Presidency comprise the most valuable political asset of the American people."

## THE UNITED STATES BUREAU OF THE BUDGET

by ROWLAND EGGER

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### I

THE executive budget in the national government of the United States is the creation of the Budget and Accounting Act of 1921. But there is little in the provisions of the 1921 legislation relating to the budgetary process that improves materially upon the understanding of the responsibility of the executive branch for budgetary leadership entertained by Alexander Hamilton, the first Secretary of the Treasury. Indeed, the law of 1789 establishing the Treasury Department made it the duty of the Secretary "to prepare and report estimates of the public revenue, and the public expenditures". And in 1800 a supplementary act directed the Secretary "to digest, prepare and lay before Congress . . . a report on the subject of finance, containing estimates of the public revenue and expenditures, and plans for improving or increasing the revenues, from time to time, for the purpose of giving information to Congress in adopting modes of raising the money requisite to meeting the public expenditures". Both Hamilton, who served from 1789 to 1795, as well as Albert Gallatin, (subsequently commissioner to Great Britain) who was Secretary from 1801 to 1814 under appointment of Hamilton's arch-enemy Thomas Jefferson, sought to build the American Treasury into a replica of the British Treasury, and the post of Secretary into an approximation of that of the Chancellor of the Exchequer. Neither succeeded, in part because of Congressional jealousy of the Executive, in part because Treasury power became an issue in the emergence and solidification of partisan cleavages in the Congress, and in part because the structure of government established under the Constitution interposed serious obstacles



to the development of a Federal Treasury occupying, under the Presidency, a position of *primus inter pares*.

Following the failure of Gallatin to establish the principle of substantive review of departmental estimates prior to their submission to the Congress, the Treasury function, in respect of budgetary matters, became a merely routine one of collecting and printing the estimates, in accordance with statutory requirements, and of transmitting them to the Congress. In fact, the *longue et heureuse suite d'usurpations* to which Léon Blum attributes the dominant position of the British Treasury was enacted in complete reverse, and the language contained in Section 3669 of the Revised Statutes at the time of the adoption of the Budget and Accounting Act, providing that "all annual estimates for the public service shall be submitted to Congress through the Secretary of the Treasury, and shall be included in the book of estimates prepared under his direction", was generally understood to preclude any revision or control of departmental estimates by the Secretary of the Treasury.

## II

The Budget and Accounting Act of 1921 was by no means as comprehensive in its underlying philosophy as were the conceptions of Hamilton and Gallatin. Those who formulated the Act did not conceive of it in terms of implementing the responsibility of the President for the management of the executive branch of the Government. The elemental fact seems to be that the Congress was thoroughly frightened by the dimensions to which Federal expenditures had grown in the course of the first world war, and sought to create machinery for controlling and reducing expenditures while at the same time exonerating the legislative branch of any complicity in their unprecedented expansion. The Bureau of the Budget was conceived both in the Congress and in the executive branch to be an instrumentality for the prevention, or in case prevention was impossible the reduction, of expenditures. Its potential significance as an instrumentality of administrative management and of executive policy was almost completely unremarked. However, since no President for the

ensuing twelve years was to interest himself effectively in administrative management, or in fact to have an executive policy, budgetary or otherwise, this inadequate view of the machinery created by the new Act had no important practical consequences.

General Charles G. Dawes, who had been Pershing's Chief of Procurement in the A.E.F. in 1918 and was subsequently to achieve further distinction as author of the Dawes Plan, as Ambassador to Great Britain, and as Vice-President of the United States, became the first Director of the Budget. He gave colourful and vigorous leadership, yet withal a narrow and essentially negative orientation, to the new organization. After a year of service, he was succeeded by General Lord, and in due course Lord was succeeded by Lieutenant-Colonel J. Clawson Roop, all of whom had been associated with Dawes during the first world war. However, since Mr. Andrew W. Mellon and Senator Reed Smoot took over the Government early in 1921 and ran it from their offices at the opposite ends of Pennsylvania Avenue for the next ten years, the Bureau of the Budget became an extremely minor factor in national fiscal affairs.

With the election of Franklin D. Roosevelt and the reactivation of the Presidency in 1932, the Bureau of the Budget had another brief recrudescence, terminated by the disagreement within a year between the President and the Director, Mr. Lewis W. Douglas, over fiscal policy. Mr. Douglas was likewise destined to follow his distinguished predecessors, Mr. Gallatin and General Dawes, up the primrose path to the Court of St. James's. Despite these precedents, it is not to be understood that the Ambassadorship to Great Britain is in the regular line of promotion from the Directorship of the Budget in the American public service. For five years the Bureau of the Budget, located administratively in the Treasury, was headed by Mr. Daniel W. Bell, a career civil servant, who operated in a bifurcated capacity as acting director of the budget and assistant to the Secretary of the Treasury on fiscal and accounting matters. The administrative and fiscal history of the period gives little indication of any

especially significant impact of the Bureau of the Budget as a staff agency of the President.

### III

In consequence of the work of the President's Committee on Administrative Management, the Bureau of the Budget was completely reorganized and reoriented in 1939. Under Reorganization Plan No. I, carried out in pursuance of the Reorganization Act of 1939, the Bureau was placed under the immediate direction of the President. Executive Order 8428 of September 8, 1939, transferring the Bureau from the Treasury to the Executive Office of the President, defines its functions as follows:

1. To assist the President in the preparation of the Budget and the formulation of the fiscal programme of the Government.
2. To supervise and control the administration of the Budget.
3. To conduct research in the development of improved plans of administrative management, and to advise the executive departments and agencies of the Government with respect to improved administrative organization and practice.
4. To aid the President to bring about more efficient and economical conduct of Government service.
5. To assist the President by clearing and co-ordinating departmental advice on proposed legislation and by making recommendations as to Presidential action on legislative enactments, in accordance with past practice.
6. To assist in the consideration and clearance, and where necessary, in the preparation of proposed Executive Orders and Proclamations, in accordance with the provisions of Executive Order 7298 of February 18, 1936.
7. To plan and promote the improvement, development and co-ordination of Federal and other statistical services.
8. To keep the President informed of the progress of activities by agencies of the Government with respect to

work proposed, work actually initiated, and work completed, together with the relative timing of work between the several agencies of the Government; all to the end that the work programmes of the several agencies of the executive branch of the Government may be co-ordinated and that the monies appropriated by the Congress may be expended in the most economical manner possible with the least possible overlapping and duplication of effort.

Mr. Harold D. Smith, at that time Director of the Budget of the State of Michigan and a public administrator of wide experience, was called by the President to head the Bureau of the Budget. Mr. Smith served from 1939 until 1945, when he resigned to become vice-president of the International Bank. He was succeeded by Mr. James E. Webb, who became Under Secretary of State in 1949. Mr. Frank Pace, Jr., who had been assistant director under Mr. Webb, is the present Director.

The Bureau of the Budget is essentially a unified agency. It is organized for operating purposes into five divisions and the field service. The divisions are based upon a process division of work, while the field service is an organization of generalists serving all of the operating divisions and the President. The several divisions and their work may be summarized as follows:

1. *Division of Estimates.* The Division of Estimates, through the budget officers of the departments and agencies, collects, reviews and holds hearings on annual budget estimates, revising and preparing them for the President's consideration and his presentation to Congress in the Annual Budget; reviews supplementary and deficiency estimates; continuously studies and analyzes the operations and fiscal requirements of all agencies of the Federal Government; and reviews at quarterly intervals the apportionments of appropriations and allocations and the estimated civilian personnel requirements of all agencies.

2. *Division of Fiscal Analysis.* The Division of Fiscal Analysis is organized to study the broad functional or activity categories of the Federal Budget. It is concerned

particularly with assuring consistency and balance with respect to the fiscal aspects of Government programmes. The Division prepares quarterly reviews and pre-views on the fiscal aspects and impacts of revenue and expenditure operations, and co-operates with the Estimates Division in the development of summary reports for the formulation and execution of the Federal budget.

3. *The Division of Administrative Management.* The Division of Administrative Management advises and assists departments and agencies of the Federal Government on problems of organization, administrative procedure, and management, and, in co-operation with other agencies concerned, develops improvements in Government-wide procedures in such fields as accounting, financial reporting, personnel processes, property management, and Budget administration, with a view to more effective conduct of the Government's business at less cost.

4. *The Division of Legislative Reference.* The Division of Legislative Reference reconciles and clears, for conformity with the established policies of the President, recommendations of the various departments and establishments with respect to proposed legislation, enrolled bills, Executive Orders, and other executive documents.

5. *The Division of Statistical Standards.* The Division of Statistical Standards, in accordance with the Federal Reports Act of 1942, provides co-ordination and promotes improvements in the statistical services of the Federal Government by analyzing and clearing plans and report forms used by Federal agencies on obtaining information from the public and from other agencies, and by other means described in the Act. It also co-ordinates the handling of statistical inquiries from inter-governmental organizations in accordance with Executive Order 10033. The Division does not collect statistics.

6. *The Field Service.* As a service arm of the Bureau, the Field Service reviews and scrutinizes existing and proposed agency operations and programmes, examines problem areas of agency management, organization and

methods; assists in improvement of working relations between the Federal Government and the state and local governments in specific programme areas; and promotes the co-ordination of Federal statistical and reporting services. Field offices are located at Chicago, Illinois; Dallas, Texas; Denver, Colorado; and San Francisco, California.

#### IV

The working methods of the Bureau of the Budget in relation to such matters as calls for estimates, review procedures, estimates mark-ups, administration of financial and personnel "ceilings", allotments, apportionments, deficiency authorizations, organization and methods surveys, legislative clearance, statistical co-ordination, etc., are beyond the purview of this brief essay. These matters are, in any case, related to the specificities of departmental and agency organization and work programme, and have little interest or application outside a very definite structure of administrative organization and procedure. The methods of Budget formulation and administration, and of Budget Bureau control, are vastly different even within the Federal Government with respect, for example, to the far-flung overseas operations of the Defence Establishment and the Department of State on the one hand, and the completely centralized and integrated Securities and Exchange Commission on the other.

The more fundamental question, rather, is how adequately the operations of the Bureau of the Budget serve the basic objectives of Congressional control of over-all Governmental policy and Presidential control of the work of the executive branch of the Government. In coming to grips with the facts necessary for formulating value judgments of this nature, it is convenient to consider the adequacy of the process of Budget formulation, the effectiveness of Congressional organization and methods in dealing with the President's budget and making appropriations in accordance with or in modification of it, and the successes and failures of budgetary administration and control.

No budget estimate is better than the intelligence and integrity which have gone into the planning and programming of work in terms of manpower, materials, and time, on which it is based. The Bureau of the Budget may review and revise estimates, but it can do little to improve the quality of the estimates prepared originally in the operating agencies. The Congress may amend or reject proposals, but if the proposals are ill-formulated and badly prepared in the first instance, legislative action is equally lacking in sound criteria. The greatest single weakness in the entire budget formulation process in the Federal Government is the general inadequacy of estimates preparation at the operating level. The poor quality of budget work at the operating level is attributable, in turn, to three factors.

First, the departments are themselves largely ineffective as instruments for programme planning, co-ordination and control. Most Federal departments and major agencies are extremely loose confederations of bureaux, and some of the bureaux are themselves loose aggregations of divisions. By and large, adequate staff facilities are almost wholly lacking at the departmental level, and few Secretaries have had either the time or inclination to weld the agencies under their purported control into unified organizations. The Post Office Department, for example, has traditionally had strong Assistant Postmasters-General who operate their bureaux virtually without supervision from the Postmaster-General, most of whose time has in the past been occupied with his duties as chairman of the national committee of the party in power. In the Interior Department the departmental budget function has actually never developed at all, and the bureaux handle their fiscal and administrative problems in a virtually autonomous manner; in fact, Interior has none of the attributes of a department except a Secretary. The budget operation of the Department of State, to cite another example, although in course of improvement, has not only been atrophied by internal particularism but paralyzed by the cleavage between the departmental and foreign services. Events in connection with Defence Establishment appropriations, even since

“unification”, have demonstrated clearly that the Air Force and the Navy are sadly deficient in their understandings of the substance of budgetary unity and integral programme. The Veterans’ Administration is also feeble from the point of view of programme co-ordination, and there is little interest in this sector in effective Budget planning; the extreme weakness of the Congress in dealing with the interest group which dominates this agency is an additional factor in the poor budgetary situation of the organization. This sad story of departmental ineffectiveness—in which the handling of Budget matters is only one, and probably not the most important aspect—might be reiterated almost endlessly. On the other hand, the high grade of departmental Budget operations in the Treasury, the Department of Commerce, and in certain other sectors of the Federal establishment give evidence of the possibility of achieving effective work planning and programming, and of building tenable budget estimates, in the presence of strong departmental management which enjoys the full confidence of the political head.

Second, the departmental Budget staff receives, in most sectors of the executive establishment, very inadequate support. Public and Congressional interest is naturally centred in the action programmes of the Government. The bureau chief or division head is responsible for the action programme. Since the Secretary or agency administrator does not share with the President any responsibility for the over-all fiscal policy of the Government, he has no special incentive to bring the departmental programme into balance or to seek to harmonize it with the more general objectives of the Administration. Few Secretaries or agency administrators, therefore, give the departmental Budget officer the support, *vis-à-vis* the bureau and division chiefs directing the “popular” action programmes, essential for effective programme planning and Budget preparation. The measure of the success of a departmental Budget officer, in fact, is his ability to obtain the maximum amount of money from the Bureau of the Budget and from the Congress, with the minimum of commitments regarding its use. As General Dawes



has somewhere bluntly remarked, "the Cabinet members are the President's natural enemies".

Third, while the evidence is somewhat conflicting, there are indications that the good work planning and programming, and the preparation and justification of Budgets on a work-programme basis, do not pay off in Congressional review of the budget. Cabinet officers and agency administrators are usually somewhat less than stupid, and when they observe, as they often do, carefully planned budgets, fully documented by workload and unit-cost data, cavalierly slashed by the Congress, while other budgets having more vociferous or more ruthless interest-group backing which the Congress is unwilling to risk offending ride through intact, it is little wonder that they choose to rely on organized political pressure instead of good planning. Adequate information, in fact, sometimes proves embarrassing to interest-group representatives attempting to force Congressional approval of estimates on the basis of non-logical arguments and threats of retaliation at the polls. Like the Oxford Union, the United States Congress more often votes its sentiments than its logical convictions, and John Stuart Mill's dictum to the effect that representative bodies consistently display a lower order of intelligence in their collective deliberations than is properly attributable to their members individually is daily vindicated in the actions of the United States Congress on budgetary affairs, *inter alia*.

## V

The Budget estimates must, by definition, look in two directions. The President, in formulating the Budget, is not only synthesizing and co-ordinating his own proposals for conducting the business of the Government but is preparing the vehicle of his most significant act of legislative leadership and most important act of collaboration with the Congress. The Budget estimates must serve both purposes equally well. The Congress, in considering the budget estimates, and in making appropriations in pursuance or amendment thereof, is not only expressing the legislative will with respect to the policies of the Government, but is formulating a mandate

that must be susceptible of effective administration. The appropriations must serve both purposes equally well.

The appropriation process in the legislative branch, viewed in the large, has been conspicuously unsuccessful in achieving these ends. The estimates have not only failed clearly to present the President's plans and programmes, and to report on achievements under previous legislative authorizations, but they have on many occasions actually militated against Congressional understanding and control of Government policy. Appropriations have likewise failed to embody clear directives, and have frequently partaken of a spirit of muddled punitiveness. Bad blood has been characteristic of Executive-Congressional budget relationships regardless of political considerations; misunderstanding, bitterness and recrimination have been just as much a part of the estimates review and appropriation processes in years when the President had Congressional majorities as when the President and the Congress were of rival parties. Both branches share the responsibility for this condition. The Budget estimates have more than once attempted to secure the inauguration of policies and programmes which could not have obtained acceptance in general legislation. Appropriation act "riders" have on numerous occasions provided the means for Congressional invasion of Presidential authority and responsibility, and the nullification of the integrity of both legislative and administrative processes.

The Congress, moreover, has failed so completely to modernize its own machinery and procedures for considering the estimates and enacting the appropriations that it has defeated the most important objectives of the Budget and Accounting Act. The President presents a unified, complete and integral Budget, but Congress studies the estimates and works out the appropriations in almost exactly the same manner in which it operated in connection with the completely uncoordinated "book of estimates" presented by the Secretary of the Treasury prior to the establishment of the Executive Budget. Immediately upon receipt of the President's Budget, it is torn apart and the various sections par-

celled out to twelve sub-committees of the House Appropriations Committee. Congress never considers the Budget as a whole, and consequently never establishes any benchmarks for the consideration of its parts. A round dozen of completely separate appropriation bills are, sooner or later, reported by the sub-committees at various times, and these eventually reach the floor of the House unrelated to each other in terms either of policy, programme, money or time.

In 1946 the Congressional Reorganization Act did attempt to establish a Joint Committee on the Budget, and to move the centre of budgetary gravity legislative-ward by setting up a Legislative Budget. The performance of the Eightieth Congress under the provisions relating to Budget affairs contained in this Act was so ridiculous and so redolent of low comedy that even the most ardent advocates of the Legislative Budget idea have since been rather more than willing to forget about the entire matter. Under the leadership of Senator Taft, the Republican-dominated Joint Committee solemnly voted to reduce the President's budget by at least \$10,000 million, and on the basis of this promise proceeded to a reduction of the income tax levies. When the individual appropriation bills were reported from the sub-committees, they came in the aggregate to about what the President had proposed, and for approximately the same purposes and in the same amounts. The only way in which the Congress could save its face was to substitute "contract authority" for certain appropriations and to tell some agencies to "come back later" if the final appropriations were insufficient. The net result was actually to increase the obligated rate of expenditure.

If the President and the Congress are to discharge their common and overlapping responsibilities with respect to estimates and appropriations policies, the formalistic aspects of the separation of powers may have to be substantially modified. The President cannot legislate, although he must originate and justify the most important and complicated piece of legislation with which the Congress is confronted. The Congress cannot administer, although its decisions on the estimates have far more profound effects on administration

than even Presidential directives or departmental regulations. This argues strongly that if Congressional control of the purse is to be made effective, the reconciliation of Presidential and Congressional policies ought to have its roots in the formulation of the Presidential programme. By the same token, the reconciliation of Presidential administrative responsibility and Congressional control of policy ought to reach into the process of legislative consideration of the estimates and legislative action on the appropriations.

This is not to say that the dilemma of Executive-Legislative relationships in budgetary and appropriation matters cannot be resolved short of parliamentary government; it does not mean that Presidential control of administration must be destroyed, or Congressional control of policy enfeebled. On the contrary, a proper interpenetration of Congressional influence in the formulation of Presidential fiscal and budgetary policy and programme, and of Presidential "advice and assistance" in Congressional consideration of the estimates and enactment of appropriations might actually consolidate the authority of each within those phases of the process which are separate in fact. But until the Congress and the President are able to achieve a consultative *modus operandi* comparable to that which a number of American state governors have established with their legislative bodies, until the Congress has reorganized itself to deal competently with a consolidated appropriation bill subject to item veto by the President, and until the atmosphere of Executive-Legislative relationships is such as to permit full and free co-operation between the Bureau of the Budget and the appropriations committees of the House and the Senate, no substantial improvement in the end product of the budgetary process may reasonably be expected, no matter how much the technical processes of estimates preparation are refined and improved at the White House end of the Avenue.

## VI

In 1865 Charles Macauley, Secretary of the Board of Audit, solemnly warned Parliament in these words:

“It would certainly be a great mistake if in discussing the principles upon which the proposed appropriation check should be established, Parliament were ever again led to confound the functions of Auditors with those of Controllers—the functions of officers whose duty it is to report what Government has done with the functions of those whose duty it is to decide what Government should do.”

The Exchequer and Audit Departments Act of 1866 recognized this distinction. And although a number of the honourable members of the Congress thought that in enacting the Budget and Accounting Act of 1921 they were adopting a procedure closely analogous to the system of parliamentary audit of public accounts obtaining in Great Britain, they failed completely to understand Macauley's point. The Comptroller General of the United States is not an auditing officer, but a settlement officer. His function is to make the final administrative determination of the balances due to or from the United States on accounts between itself and its debtors or creditors. The Comptroller General of the United States, an officer appointed by the President with the advice and consent of the Senate for a term of fifteen years, and removable only by joint resolution of the Congress after notice and hearing, is not to be compared with the Comptroller and Auditor-General, but with the sum total of the English departmental accounting offices. Even this analogy breaks down under examination, since there is a very fundamental qualitative difference between a settlement made by an officer whose status in the administrative hierarchy places him in a position to make an intelligent and responsible certification of accounts, as in a British departmental accounting office, and one made by an officer by definition ignorant of the details of transactions, as in the General Accounting Office of the United States.

President Franklin D. Roosevelt's Committee on Administrative Management summed up in 1936 fifteen years of experience with the Comptroller General in these words:

“The results of the vesting of important executive

authority in the Comptroller General, an independent officer, who is not responsible to the Chief Executive, nor, in fact, to the Congress or the courts, are serious. Effective and responsible management of the executive departments is impossible as long as this unsound and unconstitutional division of executive authority remains. At the same time, the Congress is unable to secure a truly independent audit, which is essential if it is to hold the administration to a strict accountability."

In short, the Bureau of the Budget lacks the one indispensable tool of budgetary supervision and control—a system of accounting which produces regularly and currently the data required to manage and direct the execution of the Budget. Not only is the President's staff agency crippled by this deficiency, but the operating departments are not able to secure firm financial data necessary to the orderly operation of their programmes, since delays of from three months to three years are frequently encountered in the making of final settlements by the Comptroller General.

While the Secretary of the Treasury, the Comptroller General, and the Director of the Budget have latterly instituted a number of important and forward-looking changes designed to improve the utility of Federal accounting operations in the management of the Government, they are, as no one realizes better than themselves, patching up an essentially unsound set of institutions and procedures. The frustration of the Congress and the disgust of the general public with Federal financial statements is understandable, but the basic difficulty stems back directly to the fact that the Federal approach to accounting is preoccupied with the ascertainment and guarantee of fidelity in the handling of public monies, and disregards almost completely the production of intelligible financial data for management and for public reporting. In a national political and social economy in which the Federal Government collects and spends from one-third to one-fourth of the gross national product, frustration with and distrust of fiscal and budgetary operations are capable of producing serious consequences with respect to the national morale.

## VII

The foregoing hypercritical review of the budgetary processes in the Federal Government will undoubtedly give aid and comfort, in some particulars at least, to critics of the Presidential system and to enemies of democratic government generally. But it would be a mistake to read a testimony of internal weakness into a healthy irritation at the slowness with which democratic government moves in correcting and improving its mechanical deficiencies, and in modernizing its management of fiscal and budgetary affairs. The achievements of the Bureau of the Budget since the reorganization of 1939, and more recently in consequence of the recommendations of the Commission on the Organization of the Executive Branch, headed by Mr. Herbert Hoover, have been truly notable. The technical processes of work planning and programming, and of budget formulation, have been vastly improved in recent years, and the end is by no means in sight. Serious deficiencies remain in respect of the improvement of departmental management, which is an indispensable element in the long-term improvement of Budget making and Budget execution, of the form and content of the Budget document, of Congressional organization and procedures for dealing with the Budget, of the form and content of appropriations, and of the Federal accounting system. And while history does not record that any nation ever fell because of the inadequacy of its book-keeping, it is also true that clear and understandable fiscal procedures contribute worthily to domestic peace and tranquillity, and even to a better and more sympathetic understanding of American potentialities and limitations in matters related to international commitments.

## THE SUPREME COURT

by FELIX FRANKFURTER

*(Associate Justice of the Supreme Court of the United States).*

THE legislative history of the United States Senate began with a bill to implement article III of the federal Constitution, providing for the establishment of "one Supreme Court" and "such inferior courts as the Congress may from time to time ordain and establish." The scheme for a federal judicial establishment of which the chief architect was Oliver Ellsworth, himself a future Chief Justice, became law on September 24, 1789. There were many contenders for the Chief Justiceship and the five associates for which the first Judiciary Act provided, and not until February 1, 1790, was the day set for the organization of the Court. Even then a majority of the Court were not able to reach New York and the first formal session of the Court could not be held until the following day. From then on for a period of more than a century and a half the Supreme Court has maintained unbroken its very special relation to the constitutional scheme of American society, although during the first three years practically no business came before the Court. The Supreme Court mediates between citizen and Government; it marks the boundaries between state and national authority. This tribunal is the ultimate organ—short of direct popular action—for adjusting the relationship of the individual to the separate states, of the individual to the United States, of the forty-eight states to one another, of the states to the union and of the three departments of government to one another.

A tribunal having such stupendous powers inevitably stimulates romantic interpretation. Men of learning on both sides of the Atlantic have characterized the Supreme Court as the great political invention of the framers of the Constitution and have appraised it as their most successful contrivance. The most successful it is, but the claim of originality must be



denied. Certainly neither the Presidency nor the Congress has better withstood the fluctuating winds of popular opinion than the Supreme Court. Despite intermittent popular movements against it the Court is more securely lodged in the confidence of the people than the other two branches of the Government. But the establishment of the Court was not a fruit of the creative intelligence of the Federal Constitutional Convention. It was a continuation of means for adjustment which the colonies first and then the thirteen sovereign states and finally the Confederation had evolved. The various controversies, most of them regarding boundaries between different colonies, had to be settled, and partly they were settled by the Privy Council. After independence these controversies did not cease. To them were later added difficulties between the states and the Confederation. At first the Continental Congress tried to adjust these conflicts, but eventually it became necessary to set up a technical judicial tribunal, the Court of Appeal. Not merely the recognition of the need for a body to compose the difference between the states *inter se* and between the states and a central government but the practical response to that need evolved by the predecessor of the United States dictated the necessity and furnished the materials for the Supreme Court which the Constitution outlined and the First Congress established. At least one litigation that began during the Confederation before its Court of Appeal had its final stage before the Supreme Court. In effect the Supreme Court constituted not the invention of a new institution but the perpetuation and perfection of an old one.

Indeed some mechanism for adjusting conflicts between the centre and the constituent units is indispensable to a federal form of government. Such adjustments might be left to the federal legislature, as in part and ineffectively they were under the Confederation. But where the powers in a federal government between the centre and the circumference are distributed by a legal document, certainly in any political society where the ideas of public law derive from the common law, it is natural that conflict regarding this distribution of

power should become legal issues to be resolved by a judicial and not a political tribunal. Canada and Australia represent two different forms of federalism. In each the distribution of governmental authority as between centre and circumference is different. In each a court with functions similar to our own Supreme Court is part of the scheme, not in imitation of the American Supreme Court but as an inevitable mechanism of a federal state. To be sure the scope of authority of this adjusting mechanism may vary and is itself defined either explicitly or by the implications imported into constitutions in the document distributing powers in a federal government. That the Supreme Court should have been given all the powers it has is of course not a matter of natural law. But if any federal government is to endure, it must provide for some check rein on the constituent units, and the history of the American colonies and states made it inevitable that that check rein should be a court and not Congress. "I do not think", wrote Justice Holmes, "the United States would come to an end if we lost our power to declare an Act of Congress void. I do think the Union would be imperilled if we could not make that declaration as to the laws of the several States. For one in my place sees how often a local policy prevails with those who are not trained to national views and how often action is taken that embodies what the Commerce Clause was meant to end."

But judicial adjustments in the English-speaking world operate within traditional limitations. By confining the power of the Supreme Court to the disposition of "cases" and "controversies", the Constitution in effect imposed on a tribunal having ultimate power over legislative and executive acts the historic restrictions governing adjudications in common law courts. Most of the problems of modern society, whether of industry, agriculture or finance, of racial interactions or the eternal conflict between liberty and authority, become in the United States sooner or later legal problems for ultimate solution by the Supreme Court. They come before the Court, however, not directly as matters of politics or policy or in the form of principles and abstractions. The

Court can only deal with concrete litigation. Its judgment upon a constitutional issue can be invoked only when inextricably entangled with a living and ripe lawsuit. In lawyer's language the Court merely enforces a legal right. The rationale of the Supreme Court's function has been admirably expressed by one of the leaders of the American bar: "But august as are the functions of the court, surely they do not go one step beyond the administration of justice to individual litigants. . . . Shall we say that when an American stands before the court demanding rights given him by the supreme law of the land, the court shall be deaf to his appeal? Shall wrongs visited upon him by the illegal excesses of Congresses or legislatures be less open to redress than those which he may suffer from courts, or sheriffs, or military tyrants or civilian enemies? If this be so, if in any such case the ears of the court are to be closed against him, it is not the power of the court that has been reduced but the dearly-bought right of the citizen that is taken away."<sup>1</sup>

How subtle and unfamiliar this traditional view of American constitutional law is to even the most eminent English lawyers appears from the comment made by an English Lord Chancellor, Lord Birkenhead, upon the distinction taken by Davis: "Your President is one for whom intellectually I have great admiration. His masterly address today carried me entirely with him. But surely one refinement was a little subtle. He said that the Supreme Court had not the right *in abstracto* to construe your fundamental constitutional document; but only in relation to the issues presented by an individual litigation. But is this in ultimate analysis a very serious derogation? When an issue challenged by an individual raises the question whether a law is constitutional or not, the decision of the Supreme Court decides this question for all time; and if the decision is against the legislature, the attempted law is stripped of its attempted authority."

In thus passing on issues only when presented in concrete cases the Supreme Court is true to the empiric process of

<sup>1</sup> John W. Davis in his address as president of the American Bar Association, 1924.

Anglo-American law. But the attitude of pragmatism which evolved the scope and methods of English judicature and subsequently its American versions was powerfully reinforced by considerations of statecraft in defining the sphere of authority for a tribunal of ultimate constitutional adjustments. For in the case of the Supreme Court of the United States questions of jurisdiction are inevitably questions of power as between the several states and the nation or between the Court and the Executive and Congress. Every decision of constitutionality is the assertion of some constitutional barrier. However much a judgment of the House of Lords may offend opinion, Parliament can promptly change the law so declared. But a decision of constitutionality by the Supreme Court either blocks some attempted exercise of power or releases the cumbersome procedure of changes of fundamental law. Therefore the Supreme Court, and very early, evolved canons of judicial self-restraint. Thus it would avoid decisions on constitutionality not merely by observing common law conventions. The Court very early in its history refused to give merely advisory opinions.<sup>1</sup> Partly this was an assertion of its independence, a refusal of the role of subordination either to Legislature or Executive. The Court withholds utterance unless a controversy is so moulded as to give the Court the last word. Partly also this is a manifestation of the psychology underlying the development of English law, which has special pertinence to the unfolding of American constitutional law. To refuse to give advisory opinions, to refuse to speak at large or indeed until litigation compels, is to rely more on the impact of reality than on abstract unfolding. In the workings of a constitution designed for a dynamic society this means a preference for a "judgment from experience as against a judgment from speculation".<sup>2</sup> To pass on legislation *in abstracto* or still worse in advance of enactment would too often be an exercise in sterile dialectic and as a practical matter would close the door to new experience. But the Court

<sup>1</sup> Hayburn's case, 2 U.S. 409 (1792); *Muskrat v. United States*, 219 U.S. 346 (1910).

<sup>2</sup> *Tanner v. Little*, 240 U.S. 369 (1915).

has improved upon the common law tradition and evolved rules of judicial administration especially designed to postpone constitutional adjudications and therefore constitutional conflicts until they are judicially unavoidable. The Court will avoid decision on grounds of constitutionality if a case may go off on some other ground, as, for instance, statutory construction. So far has this doctrine been carried that at times the Court will give an interpretation to a statute much more restrictive than its text or the intention of Congress apparently indicated. Again, in order to avoid the projection of a conflict between state and national authority the Court, in reviewing state court decisions, is alert to find that the state court merely enforced some state law which the Supreme Court is bound to respect and thereby to deny the existence of a federal controversy.

The court has thus evolved elaborate and often technical doctrines for postponing if not avoiding constitutional adjudication. In one famous controversy, involving a conflict between Congress and the President, the Supreme Court was able until comparatively recently to avoid decision of a question that arose in the First Congress. Such a system inevitably introduces accidental factors in decision making. So much depends on how a question is raised and when it is raised. For the composition of the Court decisively affects its decisions in the application of constitutional provisions and doctrines which by their vagueness not only permit but invite conflicting constitutional views on the part of the justices. But time is the decisive element in phases of government, as in war. The cost of uncertainty in result due to changes in the personnel of the Court, through postponing constitutional adjudication until such a decision is unavoidable, is more easily absorbed than would be the mischief of premature judicial intervention in the multitudinous political conflicts arising in a vast federal society like the United States. Political harmony would not be furthered and the Court's prestige within its proper sphere would be inevitably impaired. And so it is as important for the Court not to decide when a constitutional issue is not appropriately and unavoidably

before it as it is to decide when its duty leaves no choice.

Some claims of unconstitutionality, however much they may be wrapped in the form of a conventional litigation, the Court will never adjudicate. Such issues are deemed beyond the province of a Court and are compendiously characterized as political questions. Thus although according to the Constitution "The United States shall guarantee to every state in this union a republican form of government", the Supreme Court cannot be called upon to decide whether a particular state government is "republican". This and like questions are not suited for settlement by the training and technique and the body of judicial experience which guide a court. What such questions are and what they are not do not lend themselves to enumeration. In these, as in other matters, the wisdom of the Court defines its boundaries.

To be sure judicial doctrine is one thing, practice another. The pressure of so-called great cases is sometimes too much for judicial self-restraint, and the Supreme Court from time to time in its history has forgotten its own doctrines when they should have been most remembered. On the whole the Court has had to weather few popular storms. Even these few could have been avoided by a more careful regard for its own canons of judicial administration. The avoidable political conflicts which the Supreme Court has aroused by transgressing its own technical doctrines of jurisdiction demonstrate the large considerations of policy in which those doctrines are founded.

In the same soil of policy is rooted the canon of constitutional construction to which the Supreme Court throughout its history has avowed scrupulous adherence. The Court will avoid if possible passing on constitutionality; but if the issues cannot be burked, if it must face its responsibility as the arbiter between contending political forces, it will indulge every presumption of validity on behalf of challenged powers. This is not merely the wisdom of caution but the insight of statesmanship. For the cases involving conflicts between the states and the nation or between Congress and the Executive that touch the sensitive public nerves usually turn on such ambiguous language or such vague restrictions of the Con-

stitution as to afford a spacious area of choice on the part of the primary political agencies of government. And the Supreme Court, being a court even in these matters affecting closely the nation's political life, has enunciated again and again the doctrine that the Court cannot enforce its notions of expediency or wisdom but may interpose its veto only when there is no reasonable doubt about constitutional transgressions. Here, too, the Supreme Court has sinned against its own rules. Especially in construing such vague generalities as "due process" and "equal protection of the laws" it has overlooked their significance and failed to observe that they express "moods and not commands". Cases like *Lochner v. New York*<sup>1</sup> and *Adkins v. Children's Hospital*<sup>2</sup> illustrate what Chief Justice Hughes has characterized as "self-inflicted wounds", because the deep resentment they aroused was due essentially to the Court's departure from its own postulates.

A rhythm, even though not reducible to law, is manifest in the history of Supreme Court adjudication. Manifold and largely undiscerned factors determine general tendencies of the Court, much too simplified by phrases like "the centralization" of Marshall or "the states' rights" of Taney. Thus there are periods when the Court seems to forget its doctrine against declarations of unconstitutionality so long as there is room for reasonable doubt. Thus the liberality of the Waite period was followed by the dominance of the strict views of Justice Field, in turn yielding to the reaction which made the Holmes outlook prevail. After the first world war, during the decade when William H. Taft was Chief Justice, the Court again veered toward a narrow conception of the Constitution, although Taft himself, especially in a classic dissent, admonished against this tendency. Between 1920 and 1930 the Supreme Court invalidated more state legislation than during the fifty years preceding. Merely as a matter of statistics this is an impressive mortality rate, and it is no answer to point to the far larger number of laws which went through the Court unscathed. All laws are not of the same importance, and a single decision may decide the fate of a great body of

<sup>1</sup> 198 U.S. 45 (1904).

<sup>2</sup> 261 U.S. 525 (1922).

legislation. Moreover the discouragement of legislative effort through an adverse decision and a general weakening of the sense of legislative responsibility are influences not measurable by statistics.

Other factors than personnel explain much of the Court's history. Thus on a long view what the Court does and how depends much on the amount and the nature of its litigation. And these largely turn on the sources of its business. Few suits begin in the Supreme Court. Only the United States or a state or a diplomat can become an original suitor. All other litigants reach the Supreme Court by way of appeal from some other court. While boundary controversies or other contests between states (as, for instance, the litigation arising out of Chicago's attempted use of the waters of the Great Lakes) involve sharp conflicts and invoke one of the most important functions of the Supreme Court, they are relatively few in number. The chief work of the Supreme Court is furnished by appellate business, and that business comes from the highest courts of the forty-eight states as well as from inferior federal courts. The last fact is of profound importance in the history of the court. Unlike its analogues in Canada and Australia, the Supreme Court is the head of a hierarchy of federal courts. Waiving negligible exceptions, the Supreme Court of Canada and the High Court of Australia have before them only constitutional and federal questions coming for review respectively from decisions of the provincial and state courts. Similarly in cases coming to the Supreme Court from the state courts only questions involving the federal Constitution or controlling federal legislation arise. But through the federal courts there reaches the Supreme Court a stream of litigation having nothing to do with the federal Constitution and federal legislation but involving the myriad problems that arise under the common law and under state law and state constitutions.

The Constitution empowered the establishment of inferior federal courts not merely for the enforcement of federal law but also to provide tribunals of impartiality to which non-resident suitors may resort. Congress acted upon this



authority, established a nation-wide system of federal courts and not only entrusted them with the enforcement of federal laws but also conferred upon them the so-called diversity jurisdiction; that is, cases between citizens of different states. Thus instead of setting the Supreme Court apart as a court for adjustments of legal conflicts within the federal system the first Judiciary Act and its successors also gave the Supreme Court a vast budget of common law business. Indeed down to 1875 the Supreme Court was concerned much more with common law than with issues of federal public law. In that year the power of the lower courts over federal matters was widened and consequently a stronger federal content was given to the cases coming before the Supreme Court. This enlargement of jurisdiction of the lower courts and the increase generally of litigation because of the country's expansion in size, population and enterprise produced an amount of business which was beyond the physical powers of the court. It took from three to four years for a case to reach argument after an appeal was perfected. Such delays plainly were denials of justice.

Nor could the Court give itself up completely to grappling with its appellate docket. The federal judicial system as originally established was patterned on the English judicature in including the system of circuit riding. Circuit courts were established, but no circuit judges were created. The members of the Supreme Court were also made circuit justices with *nisi prius* duties in their respective circuits. In plain English, they had to sit as judges in the lower courts and later as a collective body hear appeals from their judgments on circuit. As the court's appellate work steadily mounted, the justices had either to neglect their circuit work, especially in view of the difficulties of travel in early days, or their Supreme Court work. In fact the administration of justice suffered both in the Supreme Court and on the circuits. Only partly was the pressure eased by the creation in 1869 of circuit judges in collaboration with circuit justices for circuit work. The obvious remedy was to relieve the judges of the duty of circuit riding. This was urged as early as 1790 by Edmund Randolph,

Washington's Attorney-General, in reporting to the House of Representatives on the workings of the new federal judicial system. But circuit riding was an obstinate institution. Tradition and provincial attachments no less than the desire to promote national sentiment through the peregrinations of the Supreme Court justices maintained the circuit riding system until 1891. Since then it has fallen into desuetude.

Indeed all efforts to enable the Supreme Court adequately to discharge its essential function foundered on the circuit court system. Instead of the obvious remedy, various mechanical devices for keeping abreast of the Supreme Court docket were urged. With a too frequent misconception as to the nature of the judicial business and the conditions for its wise disposition, it was assumed that more business calls for more judges. The first Judiciary Act provided for a Supreme Court of six members, which was increased to seven in 1807 and to nine in 1837. Subject to short fluctuations from a tribunal of ten to one of seven between the years 1863 to 1869, this has remained the size of the court.

Variants of the proposal to increase the membership of the Court for dealing with the increase of business have been recurrently urged. Thus a larger membership of the Court has been proposed, ranging from fifteen to twenty-four so as to permit shifts in the sittings of the Court or work by standing divisions. England and France were cited as examples of such schemes of judicial organization, and their experience has been drawn upon by some of the states of the United States. But either of these devices would be fatal for the special functions of the Supreme Court. A contemporaneous shifting personnel would disastrously accentuate the personal factor in constitutional adjudications, and divisional courts within the Supreme Court would require a mechanism for adjusting conflicts among the divisions. Not till 1891 did Congress pass the requisite legislation. Instead of increasing the size of the Court, it decreased its business.

This was accomplished by establishing intermediate courts of appeal for each of the nine circuits (in 1929 increased to ten). These were given final authority over a large field of

appeals which theretofore had gone to the Supreme Court, leaving the latter Court discretionary power to resolve conflicts among the intermediate courts or, when an important national interest otherwise required finality of determination, by the Supreme Court itself. By thus giving to the Supreme Court obligatory appellate jurisdiction over a restricted type of litigation and for the rest letting the Supreme Court decide whether to review, the Congress enabled the Court to keep abreast of its docket. It did more. It introduced a principle of procedure capable of progressive application, which saved the Court for the discharge of duties peculiarly its own in maintaining the constitutional system. When after the Spanish-American War and the first world war the vast expansion in economic enterprise and the resulting governmental regulation of business again produced a volume of judicial business beyond the Court's powers, Congress in 1925 came to the Court's rescue at its own request, by still further withdrawing the types of cases which can be taken to the Supreme Court as a matter of right and extending the area of litigation in which an appeal can be had in the Supreme Court only by its leave.

The Supreme Court has thus ceased to be a common law court. The stuff of its business is what on the Continent is formally known as public law and not the ordinary legal questions involved in the multitudinous lawsuits of *Doe v. Roe* of other courts. The construction of important federal legislation and of the Constitution is now the staple business of the Supreme Court.

Constitutional interpretation is most frequently invoked by the broad and undefined clauses of the Constitution. Their scope of application is relatively unrestricted and the room for play of individual judgment as to policy correspondingly broad. A few simple terms like "liberty" and "property", phrases like "regulate Commerce . . . among the several States" and "without due process of law" are invoked in judgment upon the engulfing mass of economic, social and industrial facts. Phrases like "due process of law", as Judge Hough reminded us, are of "convenient vagueness". Their

content is derived from without, not revealed within the Constitution. The power of states to enact legislation restricting an owner's use of natural resources, providing a living wage for women workers, limiting the rents chargeable by landlords, fixing standard weights for bread, prescribing building zones, requiring the sterilization of mental defectives, fixing the price of milk and other commodities—these powers hinge on the Court's reading of the due process clause. The Stockyards Act, the Grain Futures Act, the West Virginia Natural Gas Act, the recepture clause of the Transportation Act, the First Child Labour Law, all involved interpretation of the commerce clause; but the fate of these laws depended on adequate information before the Court on the economic and industrial data which underlay this legislation, and judgment on these facts by the Court. Again, the Steel Trust case,<sup>1</sup> the Shoe Machinery case,<sup>2</sup> the Duplex case,<sup>3</sup> the Bedford Cut Stone case,<sup>4</sup> all involved interpretation of the anti-trust acts. But the interpretation of this legislation was decided by the facts of industrial life as seen by the Court. The conflicting opinions of the justices in cases involving the activities of trade associations were not due to any differences in their reading of the Sherman law *in vacuo*. The differences were attributable to the economic data which they deemed relevant to judgment and the use which they made of them. What constitutes a "spur track", when public convenience justifies a railroad extension or abandonment, under what conditions one railroad must permit use of its facilities by a rival, how far the requirement of a state for the abolition of grade crossings depends on approval by the Inter-state Commerce Commission—these and like questions cannot be answered by the most alert reading of the Transportation Act. Their solution implies a wide knowledge of railroad economics, of railroad practices and the history of transportation, as well as a political

<sup>1</sup> United States v. United States Steel Corp., 251 U.S. 417 (1919).

<sup>2</sup> United States v. United Shoe Machinery Co., 247 U.S. 32 (1917).

<sup>3</sup> Duplex Printing Press Co. v. Deering, 254 U.S. 443 (1920).

<sup>4</sup> Bedford (Cut Stone Co.) v. Journeyman Stone Cutters' Ass'n., 47 Sup. Ct. Rep. 522 (1926).

philosophy concerning the respective roles of national control and state authority.

These are tremendous and delicate problems. But the words of the Constitution on which their solution is based are so unrestricted by their intrinsic meaning or by their history or by tradition or by prior decisions that they leave the individual justice free, if indeed they do not compel him, to gather meaning not from reading the Constitution but from reading life. It is most revealing that members of the Court are frequently admonished by their associates not to read their economic and social views into the neutral language of the Constitution. But the process of constitutional interpretation compels the translation of policy into judgment, and the controlling conceptions of the justices are their "idealized political picture" of the existing social order. Only the conscious recognition of the nature of this exercise of the judicial process will protect policy from being narrowly construed as the reflex of discredited assumptions or the abstract formulation of unconscious bias.

Thus the most important manifestations of our political and economic life may ultimately come for judgment before the Supreme Court, and the influence of the Court permeates even beyond its technical jurisdiction. That a tribunal exercising such power and beyond the reach of popular control should from time to time arouse popular resentment is far less surprising than the infrequency of such hostility and the perdurance of the institution. No political party has been consistent in its support or its hostility to the Court. Every American political party at some time has sheltered itself behind the Supreme Court and at others has found in the Court's decisions obstructions to its purposes. This is a reflection of the fact that the Court throughout its history has not been the organ of any party or registered merely party differences. Clashes of views, and very serious ones, there have been on the Court almost from the beginning, but these judicial differences have cut deeper than any differences as to old party allegiances; they involve differences of fundamental outlook regarding the Constitution and judge's role in construing it.

Whenever Supreme Court decisions have especially offended some deep popular sentiment, movements have become rife to curb the Court's power. In Marshall's days such efforts were invoked by decisions promoting centralization and subordinating the states. In more recent times invalidation of social legislation, both state and national, has aroused popular disfavour. In the earlier period we find proposals for repealing the famous section 25 of the Judiciary Act of 1789, whereby the Supreme Court had power to review decisions of state courts denying some federal right. A brake upon a finding of unconstitutionality was also proposed by requiring the concurrence of seven justices and not a mere majority. The latter safeguard was revived by Senator La Follette in 1924, while in an earlier stage of the Progressive movement, in 1912, Theodore Roosevelt proposed a recall by popular referendum of decisions nullifying state but not Congressional legislation. But no proposal for curtailment of the Supreme Court's power over legislation has ever been adopted. The wise exercise of this power, it has shrewdly been discerned, cannot be assured by any mechanical device. The only reliance rests in the quality of the judges and the temper and training of the bar, for no graver responsibilities have ever confronted a judicial tribunal, no more searching equipment was ever required of judges. The spirit and culture and insight which should be the possessions of a justice of the Supreme Court have been stated by Judge Learned Hand: "I venture to believe that it is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject. For in such matters everything turns upon the spirit in which he approaches the questions before him. The words he must construe are empty vessels into which he can pour nearly anything he will. Men do not gather figs from thistles, nor supple institutions from judges whose outlook is limited by

parish or class. They must be aware that there are before them more than verbal problems; more than final solutions cast in generalizations of universal applicability. They must be aware of the changing social tensions in every society which make it an organism; which demand new schemata of adaptation; which will disrupt it, if rigidly confined."

All told, eighty-five judges have sat on the Supreme Court. A goodly number of them have been men of intellectual distinction. But hardly a half-dozen are towering figures: Marshall, the creative statesman; Story, a scholar of vast learning; Taney, who adapted the Constitution to the emerging forces of modern economic society; Holmes, the philosopher become king; Brandeis, the master of fact as the basis of social insight. Confidence in the competence of the Court has not been won by the presence of a rare man of genius. The explanation lies rather in the capacity of the Court to dispose adequately of the tasks committed to it. The effective conditions for insuring the quality of judicial output of the Supreme Court have in the long run been maintained. Human limitations have been respected. While in response to the country's phenomenal increase in population and wealth and the resulting extension of governmental activities duties have been placed upon Congress, the executive departments, various federal administrative agencies and the lower federal courts which disregarded their strength and capacity, the duties of the Supreme Court have on the whole been kept within the capacities of nine judges who are not supermen.

The Supreme Court's internal procedure moreover has been an important factor in the achievement of its high standards of judicial administration. In its disposition of cases, in the rules and practices which determine argument, deliberation and opinion writing, the Supreme Court operates under the following conditions, indispensable to a seasoned, collective judicial judgment: (1) Encouragement of oral argument; discouragement of oratory. The Socratic method is applied; questioning, in which the whole Court freely engage, clarifies the minds of the justices as to the issues and guides the course of argument through real difficulties.

(2) Consideration of every matter, be it an important case or merely a minor motion, by every justice before conference and action at fixed, frequent and long conferences of the Court. This assures responsible deliberation and decision by the whole Court. (3) Assignment by the Chief Justice of cases for opinion writing to the different justices after discussion and vote at conference. Flexible use is thus made of the talents and energies of the justices, and the writer of the opinion enters upon the task not only with knowledge of the conclusions of his associates but with the benefit of their suggestions made at conference. (4) Distribution of draft opinion in print, for consideration by the individual justices in advance of the conference, followed by their discussion at subsequent conferences. Ample time is thus furnished for care in formulation of the result, for recirculation of revised opinions if necessary and for writing dissents. This practice makes for team play and encourages individual inquiry instead of subservient unanimity. (5) Discouragement of rehearings. Thoroughness in the process of adjudication excludes the debilitating habit of some state courts of being too prodigal with rehearing. (6) To these specific procedural habits must be added the traditions of the Court, the public scrutiny which it enjoys, and the long tenure of the justices. The inspiration that comes from a great past is reinforced by sensitiveness to healthy criticism. Continuity and experience in adjudication are secured through length of service as distinguished from the method of selection of judges.

These factors probably play a larger part in the effective work of the Supreme Court than elevation of station, high responsibility and the greater ability of the justices, drawn as they are from the whole country, as compared with state court judges.



## HOW UNITED STATES GOVERNMENT POLICY IS MADE

by JACOB K. JAVITS

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THIS is an effort to tell the story behind the story. The constitutional processes by which Government policy is expressed in the United States through declarations of the President, his Cabinet officers and other high officials, enactments of the Congress, approval of treaties and confirmation of the appointment of public officials by the Senate are all well known to the informed reader. What may be not as well known, but is yet as important to the democratic process as it operates in the United States, are the well-springs from which come the policies that pour forth from established and constitutional government agencies. It is important that these well-springs be known and recognized, for American policy which often may appear to the foreign observer to be unaccountable is very well accounted for by its fundamental origins.

In order to give the discussion practical content I have set it as my task to analyze a number of the leading post-war Governmental policies and to trace their origins. These include some examples of the bi-partisan foreign policy which has manifested itself primarily in the European Recovery Programme, the Atlantic Pact, the Greek-Turkish Aid Programme, and the position of the United States in the United Nations, certain items of domestic policy, such as rationing and price controls, housing, and the relations between management and labour, and some of America's human problems such as how to deal with Communists and subversives, and the reception which America should provide for the displaced persons.

It will be manifest from an examination of these subjects

of Governmental policy that the well-springs from which such policy flows are as varied and as peopled as our land, for policy finds its origins equally in the State Department and in the Presidency, among the people themselves without almost any intervention of Government, among veterans', welfare and civic organizations, from the Congress itself, and interestingly enough from the United Nations. In one case, even, policy was made by a debate between two aspirants for the Republican nomination for the Presidency—but more of that later.

The essential well-spring of the European Recovery Programme was the Department of State, developing under the great leadership of Secretaries Byrnes and Hull and coming to fruition under General Marshall and Under-Secretary Acheson. Yet had not this policy enlisted the aid of Senator Vandenberg of Michigan, a great leader and an outstanding international figure who literally led the Republican Party (then in control of both Houses of Congress) to accept it, it could never have happened.

In a speech at Cleveland, Mississippi, on 8th May, 1947, the then Under-Secretary, now Secretary, of State, Dean Acheson, gave public expression to the Administration's concern with the economic deterioration in Europe. He explained the "facts of international life" which had conspired to produce an unprecedented dollar shortage abroad and added significantly that the situation could be met only by further emergency financing perhaps "of a type which existing institutions are not equipped to handle . . ."

Congress entered into the developing policy at this stage when informal consultations were held between the then Chairman of the Senate Foreign Relations Committee, Senator Arthur Vandenberg, and members of the Department of State. Such a procedure was not without precedent in the formulation of U.S. foreign policy although formal machinery for preliminary legislative-executive exploration is not provided. In this instance, the step was of the utmost importance in view of the political division of the Government between a Republican-controlled Congress and a

Democratic-controlled Administration. Senator Vandenberg was able to contribute significantly to the developing policy, not only from his extensive knowledge of foreign policy, but also from his ability to gauge the tenor of Congressional reaction to a proposal of the nature contemplated.

The official proffer of assistance which eventually became the European Recovery Programme was extended by the then Secretary of State, General George C. Marshall, in a speech at Harvard University on 5th June, 1947. Simple in context and expression, the Secretary's address incorporated a decision of policy of transcendent importance.

As it emerged at Harvard, the European Recovery Programme was still in broadest outline. The initiative in designing the working blueprint was left to Europe. The position of the United States, however, was made clear. It would consider association with an integrated programme of assistance "agreed to by a number, if not all, European nations", for a period of three or four years. The role of the United States was described as one of friendly assistance and of extension of support for Europe's programme "so far as it may be practical . . . to do so."

While the 16-nation Organization of European Economic Co-operation was meeting in Paris to prepare a programme, provision was being made in America to receive the joint report on Europe's needs and to reconcile it with America's capacities. On 22nd June, 1947, the President established three committees in the executive department to consider various aspects of the programme. In addition a special Select Committee on Foreign Aid (the "Eaton-Herter Committee"), composed of members of many of the standing Committees of the House of Representatives, was established to study the conditions of the participating European nations.

While these preparations were in progress, the process of informing the American people of the purposes and content of the programme went on apace. In the days immediately following the Harvard Address, the President and his departmental assistants at the highest levels transmitted the concept of the programme in speeches to prominent

leaders in such fields as business, culture, labour, agriculture and politics. As the details of the project became better known through the mass media of the press, radio and television, members of Congress, private groups and individual citizens participated to an ever-increasing degree in the public consideration of the programme.

By the time the special session of Congress was convened on 17th November, 1947, to consider foreign assistance, E.R.P. was one of the most thoroughly discussed and least opposed measures of policy ever to reach the legislative stage. In the subsequent hearings before the appropriate committees of both Houses, the mass of accumulated information was weighed, evaluated and finally shaped into legal form. Days of floor debate followed in both Houses led in the Senate by Senator Vandenberg and in the House by Representatives Eaton, Herter, Vorys, Fulton, Lodge, Bloom, Kee, Richards, Douglas and others, including the writer. Ten months after the Harvard Address, on 3rd April, 1947, the E.R.P. became law.

The final form of the legislation modified in many details the programme originally developed by the President in co-operation with the O.E.E.C. nations. The purpose of the E.R.P., however, remained as it was at the time of the Harvard Address—"the revival of a working economy in the world so as to permit the emergence of political and social conditions in which free institutions can exist."

It is interesting to compare this development of the European Recovery Programme with the development of sentiment in the United States for the taking over of the responsibilities of the British Government in respect to Greece. This was a Presidential policy which broke upon the country with lightning effect when on 12th March, 1947, the President enunciated to a Joint Session of the Congress his famous "Truman Doctrine" of containment of the expanding U.S.S.R., and as a specific application asked for legislation to extend the required economic and military aid to Greece which had been evacuated by the British forces according to notice given to the American Government on

24th February, 1947. It was after, rather than before, announcement of this doctrine that public and Congressional support for the aid had to be obtained.

Readers in Great Britain will be interested in a sidelight on the formulation of United States policy with respect to Israel, and why it was but a few moments after the independence of Israel had been proclaimed on 14th May, 1948, that the United States was the first to recognize the new state. This was attributable to a complexity of factors—traditional, political, humanitarian, economic and strategic—all of which had developed through three decades. All the Presidents of the United States from the time of Woodrow Wilson gave official endorsement to the Jewish aspirations for the creation of a national home for the Jewish people in the Holy Land. The sentiment was reflected in the platforms of the major political parties and numerous resolutions of the Congress and the state legislatures. Its basis was deeply grounded in the sympathy of the American people with the Jewish desire for a homeland, accelerated by the desperate plight of European Jewry resulting from the racial extermination policy practised by the Nazis.

We may with profit now turn to a situation in which the people themselves were the origin of policy and effectively caused it to be carried through. There seems to be substantial agreement that inflationary price rises in the United States were avoided by rationing and price control in World War II far more successfully than in World War I or any previous comparable period during the nation's history. When the war was over the national Administration's policy-makers indicated a desire to retain restrictions and shape reconversion policies.

In general the Administration had the backing of the organized labour groups which, though they wanted wage increases, were afraid that inflationary price increases would wipe out the advances in real wages gained by a large portion of labour during the war. On the other hand, differing from the Administration and labour group, the producers and distributors saw a danger to their position in continued

controls on industry. Their arguments were based on the theory that the Office of Price Administration could restrain price advances only at the expense of rapid reconversion and expansion, that the rapid expansion of production itself would serve as a safeguard against the possibilities of inflation after the removal of controls, and that the greater production which would result after the removal of controls would prevent scarcities.

The opinion of the great unorganized mass of American consumers in regards to the role of the controls in the reconversion period is difficult to determine. But one thing seems clear: they did desire goods and services which were denied during the war. The "do without" patriotic attitude of the American people which motivated them to endure the shortages of consumers goods during the war had changed. People had money and they wanted goods. But goods did not seem to be becoming available in satisfactory quantities. Rightly or wrongly people began to suspect that Government price ceilings and regulations were to blame for the shortages of consumer goods. The producers complained that controls acted in such a way as to make it difficult for manufacturers to produce their products at a profit. In short, the consumers were willing to pay the price necessary to achieve the satisfaction of their wants. The normally law-abiding citizen began to deal in the black market. Thus, regardless of controls, prices went up. People either paid an inflated price or they did not get what they wanted. The public was giving only half hearted support to a law which apparently it no longer wanted. The popular attitude prevailing towards controls lends support to the theory that, in a democracy, any law will work so long as the people themselves believe in it, but once their belief is gone no amount of legislation can save it. All during the autumn and winter of 1945-46 and into the spring of 1946 the campaign to lift controls continued; the pressure placed upon Congress was heavy and constant. On 25th July, 1946, Congress after having failed to do so in June, turned out a Price Control Extension Act which met with the approval of the President. This law

reinstated most of the price controls, but did call for a greatly accelerated rate of decontrol.

However, the law of supply and demand could not be dealt with so readily. Producers—faced with the prospect of what they considered to be inadequate profits—refused to send their goods to market. Available supplies of consumer commodities, particularly of meat, were lower than ever. It would seem that Congress was vindicated in its original stand on price control. The drastic reaction against the administration of price controls became increasingly evident in the fall of 1946. Butchers began to close down their shops in protest over the shortage of meat; and housewives made known their resentment over their inability to secure adequate supplies of meat. The extent of this widespread public discontent over the shortage of meat was made clearly evident to Congressmen when they began to campaign for re-election in the fall of 1946; they quickly became acutely conscious of the fact that the people were seriously aroused. Congressmen of the majority party made known the seriousness of the existing situation to the President. Their pleas resulted in the lifting of controls on meat, livestock, food, and food products from meat. But it was too late and in the Congressional elections of 8th November, 1946, many voters—believing the party in power was to blame for the scarcities of consumer goods—showed their resentment. Undoubtedly their discontent was an important factor in the election of a Republican majority to Congress in 1946.

President Truman was quick to recognize the implied verdict regarding price decontrol in the election returns. On 9th November, 1946, scarcely fifteen months after V-J Day, he removed all price controls except those on sugar, rice and rent, bringing into effective government policy the results of months of agitation in favour of price decontrol . . . the latter furnishing evidence of the highly complicated yet eventually effective manner by which public opinion finally becomes Government policy in the United States.

The effectiveness of veterans', social, civic and welfare organizations as the well-spring of Government policy is

well shown through the fruition of their work after six years of labour in the enactment of the U.S. Housing Bill of 1949. This bill provided for 800,000 publicly-assisted low-rent housing units over six years, and made other provisions for slum clearance, rural farm and non-farm housing, housing research, and improvement of financing opportunities for new private housing. It will bring our nation much nearer than it has ever been to the needed goal of 1,500,000 new homes a year to fill up the gap of 15,000,000 homes in ten years.

The drive for housing was finally supported by the leading national organizations of veterans of World Wars I and II, including the Veterans of Foreign Wars and the biggest of them (the American Legion), the two great labour organizations (the American Federation of Labour and the Congress of Industrial Organizations), church groups, social groups, social organizations of religious faiths including the largest of the Catholic, Protestant and Jewish organizations, the largest organizations working in the interest of Negroes, social workers, women's organizations and even the United States Conference of Mayors. The mass power of these organizations was perhaps best demonstrated by the first national veterans' housing conference held in 1948 which represented millions of ex-servicemen in the United States and which met in Washington to impress the members of Congress with the demand of ex-servicemen for housing.

This great organized activity on the part of organizations, co-ordinated by a number of organizations specializing only in co-ordination like the National Housing Conference of Washington, D.C. and the Citizens Housing Council of New York City, brought about that bi-partisan support without which the opposition of ultra-conservative members of Congress, who considered publicly-assisted low-rent housing a creation of collectivism, could not have been overcome.

In the 78th Congress of the United States, which was held in 1943, there was established a special committee to consider post-war economic problems, including housing. To indicate the bi-partisan nature of the fight for housing, although the Democratic party was in power at that time,



Senator Robert A. Taft, prominent Republican, was named chairman of the sub-committee on housing.

In 1944, this Committee examined every phase of the housing problem in the country. It was in close touch with all agencies and organizations that dealt with housing from the financial, construction, management or tenant viewpoint. In 1944 there began extensive hearings on every aspect of housing. Senator Taft's committee had evidence from every kind of informed housing group. In August of 1945 this committee published its report stating the comprehensive post-war housing programme that the evidence indicated would be needed to meet the housing requirements of the American people for ten years.

The first bill to be introduced in the Senate of 1945 pursuant to the above investigation was sponsored by Senator Robert F. Wagner of the North-Eastern part of the United States, New York; Senator Allen J. Ellender in the extreme South, Louisiana; and Senator Robert A. Taft from the Mid-West, Ohio. This bill passed the Senate of the United States, but died in the corresponding committee in the United States House of Representatives at the end of that session.

In the next session of Congress, in 1947, another bi-partisan housing bill was introduced by Senators Taft, Ellender and Wagner. The Republican Party was now in control of Congress and therefore a Republican name, Senator's Taft's, occurs first, but the combination is still the same. This Bill passed the Senate once again on 22nd April, 1948, but failed of passage in the House of Representatives.

From the foregoing it will be seen that throughout its history, in Congress, housing has always been a bi-partisan issue. The Republican and Democratic members did not divide evenly for or against such legislation. Rather, there were those within both parties who favoured substantially the same kinds of housing legislation. It eventually required just such support to pass the necessary legislation in 1949.

In considering domestic policy where public opinion created Congressional support, it is also interesting to

consider the area in which Congress itself made policy because it considered itself to have a mandate from the people. A great part of the Republican majority elected to Congress in 1946 considered that their election was due in substantial part to a rebellion by the people against abuses of their power by leaders of trade unions, and almost at once sweeping changes in the National Labour Relations law were proposed. I felt that the reaction was one leading to excesses on the other side rather than on the side complained against, and opposed the making of changes in the heat of such an atmosphere—but I was in the minority. So overwhelming was the sentiment of the members of Congress that the Taft-Hartley Law placing severe and vexatious restrictions on trade unions and trade union members swept through the Congress by huge majorities in the early months of 1947. On 27th June, 1947, on receipt of President Truman's message vetoing the Taft-Hartley Law, the House of Representatives immediately re-passed the bill by a vote of 331 to 83 and the Senate shortly thereafter by a vote of 68 to 25, over two-thirds, making the bill law over the President's objections. This spirit regarding labour was so deeply ingrained that even though the Democratic candidate for President who won the elections of 1948 pledged repeal of the Taft-Hartley law, and a majority of Democrats was returned to Congress too, it has still been impossible to bring about repeal or broad scale amendment of the Taft-Hartley Law.

American public opinion was deeply shocked by General Eisenhower's disclosures of the bestiality of the Germans in their concentration camps and gas chambers. Hence there was great sympathy for the hard core of about 1,000,000 Poles, Balts, Yugoslavs, Russians and Jews left in Germany after the occupation who, for fear of political, religious, or racial persecution, were unable or unwilling to be repatriated to their countries of origin and thus became displaced persons.

The action of the General Assembly of the United Nations in February, 1946, in determining upon the organization of a special agency for the care and resettlement of the displaced persons which ultimately developed into the International

Refugee Organization captured the imagination of the American people. Thereafter began a steady pressure of American opinion which led the President to advocate emergency legislation for the admission of displaced persons as early as January, 1947. The famous Stratton Bill to admit 400,000 displaced persons into the United States over a four-year period, all without regard to race, religion or national origin, unleashed enormous popular support which was climaxed by the International Refugee Organization's request to the nations of the world in 1948 to accept each a fair share of the total number of displaced persons.

But it was not until the summer of 1947 when many members of Congress actually travelled in Europe and examined at first-hand the problem of displaced persons, and after a special committee of the Committee on Foreign Affairs of the House of Representatives under the chairmanship of the Hon. James G. Fulton of Pennsylvania, upon which together with the Hon. Frank L. Chelf of Kentucky I had the privilege of serving, investigated the subject and issued a detailed report that it was possible finally to get legislation.

The accumulated prejudices of those who did not understand that immigration had been the very lifeblood of America held down the first Displaced Persons Bill to permit the admission of a little more than 200,000—and that on a very unsatisfactory selection basis—over the course of two years, and it has not yet been possible to get a better bill through both Houses of Congress since the 1948 act was passed. Yet the public interest continues at high pitch—and there will be corrective legislation. The displaced persons we have received are splendid citizenship material, and prospects for liberalization of the existing law appear very good.

The proposal which would, in effect, outlaw the Communist Party, originated in the Congress and was developed in the Mundt-Nixon Bill offered in March of 1948. It would have outlawed the Communist Party through requiring registration of party members, and then denied them the right to travel abroad and hold Government jobs, among other matters. The issue was hotly debated in the Congress and

suddenly, in May, 1948, became the subject of controversy between Governor Thomas E. Dewey and Captain Harold Stassen, U.S.N.R. then campaigning in the State of Oregon as rivals for the Republican nomination for the Presidency. A full-scale debate was held between the two candidates in Portland, Oregon, on 17th May, 1948, listened to by millions in the United States. It seemed to most listeners that on the radio Governor Dewey had prevailed, holding that outlawing of the Communist Party would be a violation of the Bill of Rights and the Constitution, would drive it underground and make it even more dangerous, while Captain Stassen argued that it was a method of stopping Communist infiltration in the United States and was a step toward peace.

After this debate interest in the legislation markedly fell off and though it passed the House of Representatives it was not considered in the Senate and hence did not become law. It is indeed a remarkable tribute to the development of the United States policy that some of our most conservative legislators condemned this effort. A typical judgment of a member of this group, follows: "However much we despise Communism, we love more our constitutional processes of congressional government, and we will not forsake them even to meet the Communist threat."

It will be seen from this brief sketch that the origins of our Governmental policy, though varied, are deep, that they rise from the very stuff from which America is made and that a patient confidence in the ultimate soundness of the policy so developed is warranted. These are not ways to decide policy quickly but they are ways to decide with depth of conviction. Once decided, the implementation of policy is in total effect more reliable and on a greater scale than anything the world has ever known. The uncertainties and the difficulties are in the coming to a decision—that is a point the peoples of the world should bear in mind. A patient confidence in the essential decency, integrity and good sense of the American people will inevitably be well rewarded.

## THE WAYWARD CHILD: CONGRESS

by D. W. BROGAN

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THE most important, the oldest, the most interesting of the numerous progeny of the Mother of Parliaments is undoubtedly the Congress of the United States. It has been a going concern since 1789; it has survived the States General of France and the Reichstag of the Second Reich. It is undoubtedly a child of Parliament; it is, itself, a great parliament. Yet it is a child differing a great deal from its mother. There are offices whose name recalls Westminster like the Speaker; but the Speaker in Washington is not quite the same officer as the Speaker in Westminster or Ottawa.<sup>1</sup> There is the mace, symbol of the power of the House of Representatives, but the material mace is the Roman fasces. There is the Senate, in so many ways copied from the eighteenth century House of Lords, but yet so different, if only in that its power has not waned. And because Congress is like and unlike, is a legitimate child but a "bould, unbiddable" child, the spectator brought up on the English parliamentary system finds it hard to be just or even to observe what Congress is and how it works.

There are historical reasons for the similarities; they need not be stated. There are historical reasons for the differences, the influence of colonial practice where the royal Governor both reigned and ruled, and the influence of the American Revolution whose leaders read Montesquieu and determined to prevent in America any imitation of the political methods of King George III.

Then there is another basic reason or reasons for the difference. The United States is a geographically vast federation, not a small, unified country. The integration of the United States is going on, "the more perfect union"

<sup>1</sup> See pp. 86-7.

aimed at in the preamble to the Constitution is progressively being attained, but the United States remains a federation, remains a continent rather than a country and, though undoubtedly a nation, is a nation of a type unknown to Western Europe. This is reflected not only in the legal limitations on the powers of the federal government and, consequently, on the powers and duties of Congress, but in the party system that is better thought of as a series of sectional alliances than as a doctrinally symmetrical party system of the type taken as normal in English political writing. We must, therefore, approach the problems of American Congressional government not with the assumption that it is based on English practice and is abnormal and wrong when it diverges from that practice, but with the realization that great as has been the influence of English models on Congressional practice, the size of the country, the character of the Constitution, and the traditions and prejudices created by one hundred and sixty years of successful working have made a system with its own internal logic, its own special strength, and its own special weaknesses.

The main cause of variation from the model is undoubtedly not the federal character of the government (Canada and Australia show that) but the exclusion of the Executive from the Legislature. This has proved much more important than the Founding Fathers realized. A *complete* Congressional career may be had with no executive experience at all. Some famous figures in American political history, Stephen Douglas, Speaker Reed, Senator Borah, never had direct administrative experience and the trend is away from nominating serving members of either House for the Presidency.<sup>1</sup>

Then Congress cannot get and would not accept the direct control of its business and time table that the Cabinet system makes second nature to the most determined "House of Commons man". The most that happens in the House of Commons is some degree of successful kicking against the pricks of front bench control. In Congress there is no front bench to kick against; Congress must provide its own dis-

<sup>1</sup> See p. 90.

cipline and organize its own business. True, when both Houses and the President are of the same party and there is harmony between the leaders on Capitol Hill and the White House, Congressional business may be controlled in the interest of the Administration, but not only may one or both Houses be of a different party from the President (as in 1947-9), but when all three units are formally united by party loyalty, discipline may be bad and the time table and legislative programme be ignored or profoundly altered. For the Congressional leaders are not the agents of the President, still less of his Cabinet; they are independent agents with whom the President has to negotiate.<sup>1</sup>

It follows that there is some justification in the claim that American government is more truly "parliamentary" than ours. For Congress is certainly a more independent legislative body than the House of Commons. There are far more examples of what in Britain would be called "private member's bills" being enacted and often on more important subjects than the private member's bills that occasionally get on to the statute book in Britain. Even the so-called "must" bills, sent down from the White House when a President has a strong party majority in each House, are nearly always enacted with amendments and are not infrequently not enacted at all.

Congress, except in times of great crisis, assumes that its duty is to examine all proposed legislation critically and not to assume that its duty is done when it enacts what the White House assures it is the fulfilment of the popular mandate. Since it will not accept automatic leadership from outside, it must provide it for itself. This it does by the use of offices like the Speakership, by the creation of offices like the "majority leader", and by the use of a very elaborate committee system.

Nothing is, at first sight, more out of tradition than the use of the office of Speaker as one of the chief instruments of party policy in the House of Representatives. For the American

<sup>1</sup> A very powerful President may decide which of two candidates is to be the leader in either House, as Roosevelt did in 1937 when he secured the election of Mr. Barkley (now Vice-President) over Senator Harrison as leader of the Senate, but even Roosevelt was not omnipotent and few Presidents are Roosevelts.

Speaker has both to see that the business of the House (in the procedural sense) is carried on and to see that the business of the Administration (if of his party) is carried on or (if of the other party) held up. The modern Speaker is not the autocrat that Reed and Cannon were, but he is still very far from being a neutral presiding officer. If his party loses control of Congress he ceases to be Speaker.<sup>1</sup> And he is elected to forward the interests of his party. To protest against this state of affairs would seem to the American politician as naive as was the tenderfoot who pointed out that the dealer at the poker game was cheating. "Well, it's his deal isn't it?" Speaker Lenthall, not Speaker Lowther, is the prototype of the Speaker of the House of Representatives.

Of equal importance is the committee system. This is, in a sense, forced on both Houses. In the absence of a cabinet system inserted into the parliamentary system, either control of business must be given to one man (as it roughly was in the days of "Czars" like Speakers Reed and Cannon) or put under the control of committees. In both Houses business is controlled by committees which allocate time and which decide what bills shall be considered. All members are private members with equal rights; each member can and usually does introduce bills if only to impress his voters. The choice of bills to be dealt with is the business of the committees. No bill, except under exceptional circumstances, has any chance of success if it is not "reported out" *favourably* by the committee concerned. And the chances of success are greatly affected by the operation of a Congressional custom, "the seniority rule", which provides that the chairmanship in all committees goes to the member of the majority party with the longest *continuous* service on that committee. Given the working of the "locality rule"<sup>2</sup> and the geographical allocation of party strength this means that seniority and power go to the older members from the states and districts which never change their party allegiance. Elections are won by securing the support of the

<sup>1</sup> As Mr. Rayburn did in the 80th Congress, to return to his old office in the 81st.

<sup>2</sup> See pp. 90-2.



doubtful states; they are represented by the return to Congress of new members who have successfully appealed to the floating voters—and power is largely in the hands of old men who have no need to appeal to floating voters since their states or districts are securely attached by historical tradition to one party. The results are often paradoxical. At the moment, for instance, the Democratic leader in the Senate has been forced to appeal to the *Republican* leaders to secure the “discharge” of a bill affecting the admission of displaced persons which has been held up in committee by its Democratic chairman, Senator McCarran of Nevada, a state whose two Senators representing 100,000 permanent residents, can cancel out the votes cast by the Senators representing the fourteen million residents of the State of New York.

Either House can, of course, force committees to “discharge” bills to be voted on by the whole House, but repeated use of this power would destroy the discipline of Congress and make effective legislation impossible. Committees are a necessary evil; are they more than that? They are; they do give a chance for a Representative or a Senator to acquire a command of one area of legislation which it would be difficult to acquire in the House of Commons, and they do make effective (for what it is worth) parliamentary autonomy in legislation.

Moreover, it is in testimony before Congressional committees that, alone, Cabinet officers can publicly appeal to Congress—and the voters—and it is in the committees and nowhere else that there is a rough equivalent of Question Time. But this cumbrous system of liaison between the executive departments and Congress is unnecessarily time wasting. For the same evidence has to be given before the relevant committees of each House and sometimes before more than one committee of each House. Too little use is made of joint committees of both Houses and of joint sessions of committees of each House.<sup>1</sup> Indeed, in one very important field, the

<sup>1</sup> An exception should be made for special committees and for sub-committees of special committees. These need not respect the seniority rule and joint action is easier and more usual.

delays imposed by the double committee system have increased. In not very remote times, the Foreign Affairs Committee of the House was a pale and unimportant copy of the Foreign Relations Committee of the Senate. Only the Senate could ratify treaties or sanction executive appointments. But few fields of foreign policy now need no money to fertilize them and the House alone can initiate money bills, so its committee action is almost as important as the Senate's—and quite often not harmonious with it.

It is natural that, in these troubled times, the delays imposed by this system should be resented and their consequences feared. So there have been many suggestions of improvements. Thus (an old idea provided for in the constitution of the Confederate States) Cabinet officers could be given the right to speak and answer questions in either House, but not to vote. But this reform would not deal with the basic difficulty, for the Cabinet officers are nominees of the President and are in no sense independent political powers. The President can address Congress and the President alone can commit himself. Another suggested reform would create a kind of executive council in which the party leaders in each House would be associated with the President, sharing his responsibilities for the party programme. But could they share his powers? If they do not, what weight would this council have that cannot be provided by consultation outside the chambers of the Senate and the House? Either of these changes might be worth making, but neither comes near to meeting the fundamental difficulty, the separation of the Executive and the Legislature. The President alone represents the whole country; if his powers are to be shared, then the methods and still more the spirit of electing Congress will have to be changed. Some critics face this difficulty; they would give the President power to dissolve both Houses and enact that a President who lost such an election should resign. But this is not a reform of the Constitution, it is a new constitution with no present chance of enactment.

Congress has recently given formal recognition to some of the criticisms; the number of committees has been cut down,

they have been given more competent technical staffs, and they are now formally more competent to meet the highly briefed executive representatives on their own ground, but in the 81st Congress the old maxim that "crabbèd age and youth" cannot easily work together is being demonstrated. The youths are not necessarily young but the aged are very old and some of them very crabbèd.

A very important modification of the American parliamentary system is imposed by the working of the so-called "locality rule". This practice is partly based on the text of the Constitution and partly on "mere" but extremely effective custom. The Constitution provides that Senators and Congressmen shall be residents of the states that they represent; custom provides that Representatives shall be residents of their Congressional districts.

The effect of this rule is one force limiting the general prestige of Congress, in so far as it ensures that a large part of the political personnel shall not be drawn from the ranks of Congressmen and that consequently, service in Congress shall be only one way of making a success of a political career and, as far as the greatest office of all is concerned, not the usual method. Only one serving member of Congress has been elected President in this century.<sup>1</sup> Not a single member of the present Cabinet has been a member of Congress. If it were only for this result, the locality rule would be one of the chief causes of variation on the system of the Mother of Parliaments. Why should the locality rule have this result? Because it ensures the exclusion from Congress of many persons of great political talent who live in districts which, for one reason or another, would never elect them to Congress. It may be that there is more than one candidate for the one seat inside the same party. Obviously in New York, a great many persons of high political talent and, if one may judge by their successful entry upon other forms of political activity, a serious political ambition, are excluded from Congress because there are not enough New York seats to go around.

More easily demonstrable is the result of the permanent

<sup>1</sup> Warren Harding in 1920.

preponderance of one party in a district or state. Thus the one national elective office that F. D. Roosevelt could never have hoped to win was election to the House of Representatives from his rock-ribbed Republican district round Hyde Park. In New York City are concentrated a great many natural Republican leaders, but New York is always overwhelmingly Democratic. So the Congressional door is barred.

The Constitutional provision limiting representation in Congress to residents of the states to be represented can be justified if one clings to the high "States Rights" doctrines that had historical justification a century ago, but are more and more irrelevant to the highly integrated United States of to-day. And the Canadian example shows that a territorially equally vast and less united federation can get along without this rule. The career of Mr. Mackenzie King would have been hampered if the rule had existed, perhaps have been more than hampered, and it would have been far harder to find a seat for such newcomers to politics as Mr. King's successor, Mr. Saint-Laurent, and for Mr. Saint-Laurent's successor, Mr. Lester Pearson<sup>1</sup>.

If the Constitution imposes state residence, what is to be said for district residence? Not much, unless we assume that the basic duty of a representative is to be a kind of consul for his district. True, the rule is sometimes evaded. Thus Mr. Franklin D. Roosevelt Jr. was a very recent resident of the 20th New York district when he was elected to succeed Mr. Sol Bloom, but the limits of evasion are narrow.<sup>2</sup> To sum up, the personnel of Congress is limited to those politically active members of the dominant party in states and districts and to two (for each state) and one (for each district). If Senators or Representatives are in secure hold of their seats, no Congressional career is possible for even the brightest young man.

<sup>1</sup> The British example is not as relevant as the Canadian, but the electoral history of Mr. Gladstone, Mr. Churchill and Mr. Balfour suggests what rigidities the American system might have imposed.

<sup>2</sup> It was suggested recently that Governor Dewey should nominate Mr. Hoover to serve out the term of Senator Wagner for although his nominal residence was in California, his real abiding place was New York City.

If no party is in safe control, would-be Senators or Congressmen know that if they are defeated later on, there is no alternative seat that they can be brought in for. So service in Congress may be either impossible or a gamble that no prudent man will make.

A necessary, but in some cases disintegrating institution, is the "direct primary" which is the normal method of choosing candidates in practically every state in the Union. The voters enrolled as Democrats or Republicans choose, in state-controlled elections, who shall be the official party candidates. In states where one party is dominant, this is the real election, in all states the official label is normally decisive.<sup>1</sup> The consequences for party unity in Congress are important. Most members of each House have shown, by winning the nomination, that they are independent political forces; they may have to some extent "ridden on the coat tails" of a popular and successful Presidential candidate or he may (as was the case in many states in November 1948) have come in with less votes in those states than the successful Congressional candidates got. In every Congress some and, in some Congresses most, members are in a position to defy White House pressure over a large field of proposed action.<sup>2</sup>

Then the division of powers between the two Houses greatly affects parliamentary methods. The Senate is the less representative but more powerful of the two bodies. The equality of representation of the states is a defiance though, probably even now, a necessary defiance of arithmetical democracy. Then only a third of the Senate is elected at the same time as the President and the whole of the House of Representatives. We must think of parliamentary power as divided between two rival and roughly equal bodies. One of these, the House, because of its size, needs rigid rules and rigorous committee control. The other, the Senate, is small

<sup>1</sup> In some states the primary is "open", voters do not have to claim party membership. In California, the primary is more than open since a candidate can be nominated by *both* parties.

<sup>2</sup> It should be noted that all of the House and a third of the Senate in "mid-term" elections have to get elected without the help of a strong or the handicap of a weak Presidential candidate.

and can afford the luxury of very loose rules, the more that it need not be in a hurry whereas the Representative, elected for only two years, is only too conscious of "Time's winged chariot hurrying near".

Again, the contrast with a practically omnipotent House of Commons whose five year term can only be shortened at the will of the governing committee, the Cabinet, is striking. The delays, the uncertainties, the vacillations, the division of powers between the Union and the States, between the President and the Congress, between the Senate and the House, and between all of them, jointly and severally, and the Constitution as interpreted by the Supreme Court need only be stated.

And it should be noted that each one of these divisions has more than historical justification, that the United States is not yet so united as to want a government as unified, as powerful, and as speedy in action, at any rate in normal times as there is in Britain. The American critic of Congress may think the delays and divisions are luxuries the United States can no longer afford, but he is more likely to lament the world changes that have made much constitutional practice obsolete, than to rejoice in the increased "efficiency" of his governmental machine.

What are the abiding merits of the American system? It does protect minorities in a way unknown to Britain; legislation requires much more than a mere majority to make it effective; and no election is a simple mandate to party leaders to carry out a programme. It does give members much more legislative training and power than the English system does to the private Member (though less chance of getting executive experience). It links every part of a sub-continent to the federal government by making sure that every serious group of interests and, in tens of thousands of cases, of individual voters, can get a hearing in Washington. It humanizes government, at great expense in money, time and friction. It mitigates the harshness of the maxim that this is a "government of laws and not of men" and so, for all its weaknesses and even for all its follies, the Congressional system is, in its own less dramatic and less revered way, as much part of the American political system as the Presidency or the Supreme Court.

## REORGANIZATION EFFORTS IN CONGRESS

by HAROLD ZINK

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**D**URING the decade preceding 1945 there was a rising tide of criticism of the system under which the Congress of the United States operated. Far-reaching changes had been brought about in the office of the President and in the administrative departments; indeed in the case of the former such spectacular modifications had been made that it was commonplace to refer to the "new Presidency". Under Franklin D. Roosevelt a sizable force of "little Presidents", "brains trusters", consultants, research personnel, planners, budgetary and administrative management technicians, and secretaries had been recruited to assist the President in the discharge of his duties, which had become increasingly extensive and complicated. But the organization of Congress remained very much the same as it had been several decades earlier, when instead of voting the expenditure of many billions of dollars the annual budget ran to a mere \$1,000,000,000 and when the general task of law-making was a far simpler matter than during the great depression and the war years. It was alleged by many critics that Congress lagged far behind the President in competence to deal with public business, that the difficult relations characterizing the legislative and executive branches were to be explained in large measure by the inferiority complex which Congressmen had developed as a result of the more aggressive and alert Presidential staff, and that the long delay and frequently inadequate results of Congressional action were to some extent at least to be accounted for by the antiquated system under which Congress operated. To those who regarded the legislative branch as the bulwark of democracy, representing the people more intimately than any other branch and responsible for fundamental policy decisions, the deteriorating reputation of Congress was a source of much concern.

Nevertheless, despite the acute situation, the members of Congress for some years seemed to display little initiative in correcting the shortcomings. Perhaps the very inferiority complex which had resulted from the savage criticisms hurled at their branch in contrast to the praise often given to the executive branch created a state of paralysis; certainly it led to extreme sensitiveness. In the meantime various organized groups interested themselves in the problem. The National Planning Association drafted a long list of specific changes which it recommended as necessary to restore the effectiveness of Congress. The American Political Science Association, made up of university instructors interested in government together with various others concerned with public affairs, gave its attention to the matter by creating a special committee to study the entire situation and bring forth recommendations as to promising changes. In 1944, after rather extensive publicity had been given to the findings of the National Planning Association and the American Political Science Association's Committee on Congress, a Special Committee on Executive Agencies of the House of Representatives took cognizance of the need by recommending that Congress take action to "modernize" itself. Shortly thereafter a Joint Committee on the Organization of Congress was authorized by the Senate and the House of Representatives under the chairmanship of Senator Robert LaFollette, a well-known Senator from Wisconsin, and the vice-chairmanship of Representative A. S. Monroney from Oklahoma, both of whom had exhibited interest in the problem.

There was much speculation as to the significance of the setting up of the Joint Committee on the Organization of Congress, with divided opinion as to whether any practical result of consequence could be expected. The committee went about its assignment in a serious manner, selecting a competent research staff under the direction of Dr. George Galloway, and displaying genuine interest in the possible changes which might be made. Occasionally it proved difficult to find a time when the committee could meet, and there were various pressures which doubtless were felt to



some extent by the members. Much to the disappointment of many students of government, the committee did not feel that it was feasible for it to make recommendations regarding several of the thorniest problems, such as the system of selecting chairmen of standing committees on the basis of seniority, the filibuster technique in the Senate, and the almost autocratic role of the Committee on Rules in the House of Representatives. However, it is probably fair to state that most informed persons were distinctly impressed by the courage of the committee in tackling what everyone regarded as a task of great difficulty.

The scope of the recommendations made by the committee was broad and on the whole the proposals represented rather less in the way of compromise than many expected. A detailed consideration of the recommendations is hardly feasible, but it may be of interest to note the most important items. Perhaps the most sensational proposal as far as the general public was concerned involved a drastic reduction in the number of standing committees: in the Senate from thirty-three to sixteen (or possibly fourteen) and in the House of Representatives from forty-eight to eighteen. In order to meet the problem of poorly attended committee sessions alleged to be the result of assignment of a single member to several committees, it was recommended that each member be limited to one standing committee. Inasmuch as members complained that they were unable to give necessary attention to law-making because their constituents made such heavy demands on their time in doing favours and errands of one kind and another in Washington, it was proposed that each member of Congress be provided with an administrative aide to be paid a salary of \$8,000 to relieve him of non-legislative duties.

Since few of the committees had the facilities for carrying on anything like adequate research relating to the measures submitted to them, the Joint Committee recommended that each standing committee be provided with a staff of four research experts who would be exempt from discharge for political reasons. To provide additional technical services to

the committees, the Legislative Reference Service of the Library of Congress and the Office of Legislative Counsel (for bill-drafting) were to receive more adequate financial support. Committees, instead of delaying reports for long periods, were to be instructed to report all bills favoured by them promptly and with a statement giving a digest of the bill, reasons for action taken, the national interest involved, and the amount of money which would be required. Legislative riders on appropriation bills were to be prohibited; executive hearings on appropriation bills were to be abandoned; conference committees would be limited to differences in fact between the two Houses.

Among the other recommendations of the Joint Committee was one requiring pressure groups to register the names of their agents, the scope of their interests, and the amounts spent for various purposes, with the secretary of the Senate and/or the clerk of the House of Representatives. Federal courts were to receive authorization to settle claims made against the government, thus relieving Congress of the burden of many claims bills. The District of Columbia (the national capital) would be given self-rule and Congress would consequently no longer have to act as its council. At an early stage in each annual session the two Houses were to adopt a budget which would represent a balance of expenditures and revenues. The General Accounting Office was to carry on a considerably expanded survey of the government agencies so that Congress would be better informed as to what was actually going on. An Office of Congressional Personnel was proposed to provide a modern personnel system for all service employees of the Capitol. The *Congressional Record* was to be expanded in scope so as to furnish more information as to the entire process of law-making. Majority and minority policy committees were recommended to furnish more adequate leadership in Congress.

The report of the Joint Committee received wide publicity and in general evoked favourable comments from the press and from students of government. But it seemed to cause

consternation among certain members of Congress who either held or expected to hold committee chairmanships and who saw their added prestige and influence threatened as a result of the reduction in the number of standing committees. The opposition was successful in holding off a vote for a time and it was feared in many quarters that actual passage was doubtful. However, the expert handling of the bill by Senator LaFollette and Representative Monroney, together with the strong sentiment prevailing outside of Congressional halls, eventually led to the passage of the Reorganization Act of 1946 which embodied a major part though not all of the recommendations of the Joint Committee on the Organization of Congress. With the enactment accomplished by a Democratic Congress and a Republican Senate and House elected in November, 1946, there still seemed a possibility that the reorganization might fail to be implemented. But despite a certain amount of muttering by some of the newly elected members and their older colleagues, the provisions of the Act of 1946 were followed at least in form in organizing both Houses of Congress in 1947.

As passed the Reorganization Act reduced the number of standing committees in the Senate from thirty-three to fifteen and in the House of Representatives from forty-eight to eighteen. It authorized an administrative aide for each Congressman and provided research staffs for the standing committees. Committee assignments of members were limited, but not to the extent of the single assignment recommended by the Joint Committee. The financial requirements were in general accepted, but Congress balked at establishing a modern personnel system for Capitol employees. The proposals to give the District of Columbia self-government and to make federal courts responsible for disposal of claims against the government also were shelved for the time being. The great problems of seniority and filibustering were left untouched. Some regulation was provided for pressure groups. All in all, few were disposed to deny that significant progress had been made, though much remained to be done. A score of 50 per cent, might seem justified on the basis of

what was achieved in relation to the entire problem of modernizing Congressional organization.

An entire Congress has now operated under the Reorganization Act of 1946, and it therefore seems feasible to undertake at least a tentative though perhaps not a definitive evaluation of the results accomplished. The number of standing committees in both Houses has been sharply reduced, with the result that there is a more equal distribution of work. Under the old system committees such as Appropriations and Ways and Means in the House and Foreign Relations and Finance in the Senate were heavily burdened, while certain others had little or nothing to do. It would not be fair to say that all standing committees at present have the same amount of work, but there is certainly far more equality of load. Moreover, under the present set-up the standing committee systems in the two Houses are reasonably parallel, which, of course, has an advantage. While there has been some pressure to set up special committees to take over certain functions and thus nullify the reconstruction of the standing committee system as provided under the Act of 1946, this has been successfully resisted for the most part. More serious is the fact that sub-committees of the standing committees have been spectacularly increased in number, and there has been some disposition to accord to the sub-committees almost as much autonomy as the former standing committees enjoyed. No one can circulate among the members of Congress without hearing frequent and sharp criticism at this point, though it may be suspected that some of the complaint comes from those Congressmen who never looked with enthusiasm on the change and who remember that they might have held chairmanships of committees under the earlier arrangement.

Perhaps the most valuable achievement of the Act of 1946 has been the improvement in Congressional research facilities. The situation existing prior to 1946 was shocking in this respect. Some of the committees, it must be admitted, have abused the provisions made for expert research staff by employing journalist hacks and political hangers-on. The

events already reported in 1949 under the organization of the new Democratically-controlled Congress indicate that the provision relative to discharge of research staff members for political reasons is not being observed in every case. Nevertheless, it can hardly be denied that some of the committees have done an admirable job in recruiting research staffs; the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs may be mentioned among others as outstanding examples. The Legislative Reference Service of the Library of Congress has laboured very diligently to provide expert assistance to Congress and has achieved substantial results, though it has been denied adequate appropriations and received somewhat of a slap in the face when the House of Representatives voted to set up an Office of Co-ordinator of Information.

The regulations imposed on pressure groups are rather innocuous, and there is no evidence that pressure activities have been diminished by the Act of 1946. Nevertheless, the mere registration of agents and the reporting of expenditures serves a useful purpose. Some improvement is to be noted in the bad practice of attaching legislative riders to appropriation measures and in the character of the *Congressional Record*. On the other hand, the financial provisions of the Reorganization Act have been largely ignored. The appropriations for the General Accounting Office have never been such as to permit the performance of the work specified in keeping Congress constantly informed as to the efforts of the many administrative agencies. While Congress went through the motions of establishing a maximum sum to be appropriated during the years 1947-48, the two Houses failed to agree on the amount and the practical result was hardly perceptible. Despite the vigorous opposition of certain members who maintained that the financial provisions mentioned above should be considered among the most important parts of the Reorganization Act and that it could not be properly claimed that they had failed when they had never been put into effect, the majority leaders of the Senate and House in 1949 agreed upon a repeal of this section. Repre-

Representative Monroney, the co-sponsor of the Act of 1946, gave Congress a rating of 50 per cent. in carrying out the provisions of the Reorganization Act during the first year; a slightly higher rating might possibly be justified after two years of experience, but in general that evaluation probably holds true for the entire Eightieth Congress.

If the Act of 1946 may be said to have covered about 50 per cent. of the field and the actual carrying-out rate during 1947-49 has been 50 per cent., that means that a net achievement of approximately 25 per cent. has been made. Such figures are of course the merest estimates, but the fact remains that much remains to be done to bring the Congress of the United States to a point where it can handle its enormous responsibilities with maximum effectiveness. One additional problem has been dealt with during the first days of 1949: the autocratic power of the Committee of Rules of the House of Representatives. Since the "Revolution of 1910-11", when the Speaker's powers were drastically clipped, the Committee on Rules has played a large role in determining House business. Recently it has essayed a more autocratic role than previously and on a number of occasions has prevented standing committees from bringing their measures to a vote. In organizing the House at the beginning of 1949 the rules were modified so that hereafter if the Rules Committee refuses to give a bill right of way, the chairman of the standing committee which has original jurisdiction may move after twenty-one calendar days that the measure go to the floor for action. The House then determines by majority vote whether to pass or kill the bill as reported by the committee. The reaction on the part of the public and the President to the technique of filibustering in the Senate has become increasingly unfavourable. Key legislation which would undoubtedly have passed had it come to a vote has been held up by the action of a minority—sometimes a very small minority—in the Senate through talking the opposed measure to death (the filibuster). Having taken a definite stand on the Civil Rights Bill and realizing that the chances of passing this bill were not good as long as the

filibuster is permitted, the Democratic leaders stated it to be their intention during 1949 to face one of the most important problems of the Congress of the United States. It was hoped that it would be possible to adopt a closure rule under which a simple majority of the Senate would be able to bring debate to a close and obtain a vote on a pending measure. But after a bitter fight in which eight Republican Senators joined fifteen Democratic Senators from the South, the efforts of the majority leaders, which carried the support of President Truman, proved unavailing. The rule finally adopted provided that debate could be shut off after a stated interval by a vote of two-thirds of the sitting members except that any future attempt to amend the closure provision would be immune from the application of the rule. The net effect of this was variously interpreted, but it was the opinion of many well informed students that it did little or nothing to ameliorate the situation.

Two other matters of the highest significance remain for the future to deal with, though there is more awareness of their importance at present than ever before. One involves the curious system of giving the chairmanships of the standing committees in both houses of Congress to those who have been there the longest. Irrespective of ability, reputation, leadership in the party, or any other factor, these important positions have been bestowed on those who can be called Nestors in Congress. During recent years the system has been more bitterly attacked in the press and elsewhere than ever before, perhaps because several of the most influential chairmen have behaved in a highly sensational if not a scandalous fashion, making not only themselves but their party somewhat ridiculous by their fantastic utterances. There are few who have much to say in defence of the seniority system, though there are doubtless many who for reasons best known to themselves continue to favour such an irrational arrangement. But the difficulty is a suitable substitute, and here there is great difference of opinion. The most obvious plans of having chairmen elected by the two Houses or by their fellow members on the committee are questioned because

f alleged fears that an even more unfortunate situation growing out of political manipulation would result. But if public opinion continues to develop at its present rate, it seems probable that a change will be made within the foreseeable future simply because of the feeling that no method of filling chairmanships could be worse than the present one.

The second remaining major problem is not exclusively legislative but rather has to do with the relationship of the executive and legislative branches of the government. The doctrine of separation of powers continues to have its ardent supporters, but as a practical matter the gulf which divides the President from Congress and leads to rivalry and friction rather than teamwork and co-operation is coming in for more and more concern on the part of serious-minded persons. The record does not show that the business of the United States can be handled very satisfactorily on the basis of the pulling at cross purposes which has frequently been the rule. But again the question is what can be done by way of a substitute. Theoretically the Cabinet system seems the answer, but as a practical matter there are few who think that the Cabinet system could be introduced into American government. President Truman has resumed the holding of weekly conferences with Congressional leaders, but it does not seem that this will prove too effective, judging from the experience of the past. The thinking of those who have crystallized their ideas at all seems to point in the direction of a reconstruction of the existing Cabinet in such a manner as to include Congressional leaders as well as a small number of heads of general administrative agencies. Such a Cabinet, it is hoped, would have sufficient prestige to influence the President and at the same time would inspire the confidence of Congress. Strengthened by a secretariat, it is argued that it could go far in harnessing the executive and legislative branches together into a working team. But there remains much confused thinking in this field, and it would require a daring prophet to predict when sufficient clarification and agreement will be attained to bring about action.



## “THE MOST REMARKABLE OF ALL THE INVENTIONS OF MODERN POLITICS”

by LINDSAY ROGERS

*(Burgess Professor of Public Law, Columbia University)*

THE Senate of the United States is now the most powerful second chamber in the world. In all other constitutional systems of government the powers of upper chambers have waned. The authority of the Senate has waxed. The Parliament Act of 1911 greatly restricted the powers of the House of Lords and the Labour Government intends to limit the suspensory veto to one year. The states which drafted new constitutions after the conclusion of the Paris peace treaties of 1919 set up secondary chambers whose vetoes could be set aside by special majorities in the more “popular” branch of the legislature. That is the model followed in the newest constitutions of France and Italy.

The framers of the American Constitution thought that the House of Representatives would be the more influential chamber and that the Senate might provide a salutary check on its excess of zeal. For a time the anticipations of the framers were correct. In the early days of the republic the House of Representatives was the more influential chamber, and the Senate acted principally as a council of revision. Now, however, the Senate presumes to lead the way in legislation, to influence, on occasion to determine, foreign policy, and to attempt supervision of the executive. In its origins it was a product of distrust of democracy. At present it can certainly be a brake on democracy, for Senators have a six-year term and one third of their number are re-elected biennially.

Sixty years ago, Sir Henry Maine declared that the Senate was “the one thoroughly successful institution which has been established since the tide of modern democracy began to run”. He measured its success, perhaps, because it might

raise a dike that would restrain the tide. Unlike the House of Lords under Liberal Governments, the Senate has always yielded to what was clearly the popular will. Hence only rarely is there any serious—and it is always a temporary—discussion of curbing its powers. And whether one likes the Senate or not, one must agree with Gladstone that it is a remarkable body—"the most remarkable of all the inventions of modern politics." What are the principal characteristics of this remarkable body?

The theory of the bicameral system is that it may provide an appeal from Philip Drunk to Philip Sober. The famous dilemma of the Abbé de Siéyès is a little too simple: "If a second chamber dissents from the first, it is mischievous; if it agrees with it, it is superfluous." Explaining the need for a second chamber to Jefferson, George Washington poured a cup of boiling tea into a saucer to let it cool. "This", he said, pointing to the saucer, "is the second chamber." True it is that a Cabinet system like the British, in which the executive has an absolute prior veto on all legislation, makes this cooling or revisory function of an upper chamber less necessary than in a system where the Cabinet must follow as well as lead. But if the House of Lords were abolished and nothing put in its place, the increased burdens of the House of Commons would be unbearable; and even if, as applied to the United States, the Abbé de Siéyès' dictum were true, the Senate would still be necessary. The United States has a federal system of government and the peoples of the several states would be unwilling as state electorates to be unrepresented in one branch of the American Congress. Students of Congressional history might point out very persuasively that in the controversies between the House of Representatives and the Senate over what should go on the statute book, the Senate has never (save perhaps in the case of slavery) been a chamber which "protected" the states. Psychologically, however, the Senate is necessary.

Nor are objections raised to the equal representation of each state: Nevada with a population of 110,000 has two Senators, and so has New York, with a population of

13,500,000. There are no issues in American politics where equality of representation protects the small against the large states. The Constitution provides that no state may be deprived of its equal representation in the Senate without its consent. Some students of the Constitution suggest that the clause could be expunged from the Constitution by an ordinary amendment and that then another amendment might provide for a different method of apportioning Senators. But the matter is purely academic. There has never been any serious discussion of a changed basis of representation. Controversies have gone only to the powers that the Senate was asserting and to the manner in which it was using them.

In respect of its ordinary legislative authority, the Senate refuses to bow to the House of Representatives because this body is fresher from the people and presumably may more accurately voice the popular will. Long before the change in the method of electing Senators was effected (1913)—by popular choice instead of by the legislatures of the several states—the Senate was asserting its rights in respect of financial as well as ordinary legislation. The Constitution provides that bills for raising revenue must originate in the House of Representatives, and by custom appropriation measures originate there as well. But the Senate can strike out everything after the enacting clause and can insert its own measure. It increases and reduces taxes and appropriations.

With the Senate a much smaller body than the House of Representatives, it is natural that one out of 96 thinks himself much more important than one of 435. A body of *prima donnas* is inclined to insist on prerogatives, and popular election has not made Senators less modest. The legislatures may have sent to Washington persons who would have been unwilling or unfitted to endure the turmoil of popular choice, and electorates may choose some Senators of a demagogic type who would find no favour with a legislature, but the Senate has not become more or less remarkable by reason of the changed method of election.

It is in respect of three non-legislative functions and one matter of procedure that the Senate gains in interest. One

non-legislative function is relatively unimportant because it is so rarely used. The House of Representatives presents articles of impeachment of public officials or judges and the Senate acts as a high court. It then becomes a quasi-judicial body. The Senate's other two functions make it part of the executive.

The Constitution provides that the President "shall nominate and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which may be established by law." Hamilton defended this provision on the ground that there would be "no assertion of *choice* on the part of the Senate"; it would feel no "other complacency towards the object of an appointment than such as the appearances of merit might inspire, and the proofs of the want of it destroy." Hamilton was wrong. Almost at once the Senate began to interpose vetoes on Presidential appointments. Fifty years after the adoption of the Constitution, commentators like Story could speak of the Senate as having powers simply of "consent or refusal" and but "a slight participation in the appointments to office." But there then was in gestation what is now known as "Senatorial courtesy", one of the dearest unwritten conventions of the American Constitution.

Senatorial courtesy has become a kind of *liberum veto*. It means that while the Senate does not nominate, it expects that the President, in naming certain office holders, will choose persons satisfactory to the Senator or Senators of the President's political party from the state in which the offices are located or from which the appointees come. "The strength of the pack is the wolf and the strength of the wolf is the pack." If suggestions of Senators are ignored or if their objections to Presidential appointees are flouted, the Senate will frequently not approve the nominations. I say frequently because in some cases there have been Presidential victories, but these depend on the accidents of circumstance and on imponderables: the strength and popularity of the President; the merit of the

appointee; the standing of the objecting Senators with their fellow Senators; and the general political situation.

On the whole, the Senate has shown restraint in interposing vetoes in the case of major appointments. The tradition has been pretty well established that the President is entitled to the Cabinet—the heads of the departments—he desires, and that the Senate will not interfere even though its majority may be politically hostile to the occupant of the White House. Between 1868 and 1925 there was no instance of the Senate refusing to confirm an appointment to the Cabinet. In the latter year the Senate declined to approve a nomination by President Coolidge for Attorney-General because of fears that the appointee's past connections might be incompatible with a vigorous enforcement of the anti-trust laws. In the last quarter of a century there has been no Senatorial veto on a Cabinet member.<sup>1</sup>

The second great executive function of the Senate is in connection with foreign policy. The President "shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur". The language differs from the language on the appointing power. "By and with the advice and consent of" follow the words "shall have power" and come before the definition of the power referred to. It is doubtful whether the framers of the Constitution by such nuances in phraseology intended that the Senate should play the role in foreign policy that it has long insisted was its own. On occasion the advice and consent of the Senate have gone beyond affirmatives or negatives and have desired the substitution of Senatorial judgment for the judgment of the executive.

"One more than one third of our number", the Senate can in effect say, "will defeat this treaty in its present form, but we will be willing to agree if changes are made in the particulars we specify. We insist that our judgment is better than

<sup>1</sup> The Senate has refused to confirm a nomination by President Truman for the Chairmanship of the National Security Council—a post of greater importance than most of those held by members of the Cabinet. There was no question of "Senatorial courtesy". The objection was that the nominee had no "appearances of merit".

yours. Public opinion cannot touch us until it has forgotten or is distracted by other issues. We care nothing about delays or embarrassments *vis-à-vis* other nations. Hence you had better agree to accept the only conditions on which our minority will not exercise its constitutional veto." John Hay maintained that "there will always be thirty-four per cent of the Senate on the blackguard's side of each question that comes before them." He exaggerated, but there will always be minorities representing individual prejudices and interests.

The President of the United States has no weapon of party discipline that he can use in such situations. Because of qualities of leadership and by favouring Senators in respect of appointments, he may be able to influence votes on domestic legislation. It is far harder for him to assert such influence on questions of foreign policy when one more than one third may defeat his proposals and when, to neutralize an adverse vote of one, he must persuade two votes to go along with him. I remember how puzzled my British and Continental friends were in 1919 when the Senate refused to advise and consent to the ratification of the Treaty of Versailles and insisted on imposing reservations. European statesmen should have remembered the two-thirds provision; that President Wilson did not have a party majority in the Senate; and that even if he had a party majority he might not be able to control it. In respect of this great controversy, however, I venture to remark that, for the failure of the treaty, Mr. Wilson shared the blame with Senator Henry Cabot Lodge and his supporters. The President should have accepted the Senate's reservations which were not of crucial importance. His intransigence as well as Senatorial *amour-propre* made the United States formally withdraw from Europe.

As World War II came to an end, there was some discussion of the desirability of a constitutional amendment paring the powers of the Senate in respect of treaties and providing for their approval by simple majorities in both Houses of Congress in the same way that laws are approved. In theory there has always been much to be said for this and the case is stronger now that so many international commitments require ancillary

legislation in which the House of Representatives must join. But a constitutional amendment is not practical politics. Unless the Senate took the wrong side on some question of foreign policy and the excitement of the country remained at white heat, the Senate would not agree to an amendment curbing its authority.

Hence there were proposals that Senatorial advice and consent to ratify be circumvented by way of executive agreements approved by Congressional joint resolutions. This expedient has been frequently used. For example, it took the United States into the International Labour Organization. Perhaps resort would have been had to the expedient had not the Senate, following Dumbarton Oaks and the United Nations Conference in San Francisco, shown itself more "statesmanlike" than on many previous occasions in its history. By statesmanlike I mean the willingness of Senators to consent to a moratorium on their *prima donna* activities and to go along with what was undoubtedly the prevailing sentiment of the country. If and when one more than one-third of the Senate refuses to advise and consent to the ratification of a treaty which the country really thinks is in its interests, then there will be another abortive discussion of curbing Senatorial prerogatives and meanwhile they will be circumvented through executive agreements approved by joint resolution of Congress.

In one other respect—a matter of internal procedure—the Senate of the United States is unique among all legislative bodies in the world. It is the only important chamber in which debate cannot be curbed—in which there cannot be action when a majority of members are willing and eager to act. Parliamentary obstruction—filibustering—is a political sport for which the season is always open.

Before 1917 it was impossible to end debate in the Senate so long as any Senator wished to speak. There were frequent filibusters, for the most part engineered by individual Senators, with whom sympathizing colleagues occasionally joined. A Senator or Senators would hold up appropriation bills because they failed to contain items for public improvements in their states; or, as watchdogs for the Treasury, Senators would

filibuster against what they considered outrageous extravagances. It was rare, however, that any meritorious legislation was unduly delayed. The public looked upon filibustering as a political stunt with some obscene features, but it seldom became excited, and never effectively so until 1917. Then a filibuster in the Senate prevented the passage of a bill giving President Wilson authority to arm American merchant ships.

Public opinion was aroused and the Senate adopted a closure rule. This provided, in brief, that if sixteen Senators signed a motion to bring debate on a pending measure to a close, the presiding officer should at once state the motion to the Senate and should, on the following calendar day but one, lay the motion before the Senate and order a roll call. If two-thirds of the Senators present and voting wanted debate brought to a close, then thereafter no Senator could speak for more than one hour.

From 1917 down to the present Congress, the Senate has voted nineteen times on whether debate should be brought to a close, but the necessary two-thirds majority has been obtained in only four cases. During the last twenty years the Senate has always refused to invoke the 1917 rule and thus limit its garrulity. Some measures have been delayed, but it is correct to say that, save for civil rights legislation, no important statute in which there was any public interest has been kept from coming up for a vote.

Meanwhile, it developed that filibustering was possible in parliamentary situations where the closure rule might not apply. In order to delay consideration of civil rights legislation, Senators refused unanimous consent to dispense with the reading of the Journal, insisted that it be read, and then offered amendments and corrections, on which they made interminable speeches. When the Senate yielded to public pressure and framed its closure rule in 1917, no one had given any thought to possible obstructionist tactics in respect of such a measure as approval of the Journal. It was assumed that the Senate could, by a two-thirds vote, bring any filibuster to an end. But in 1948 the presiding officer of the Senate ruled that a motion to bring forward a bill (barring poll taxes in the



Southern states that have them) was not a "pending measure" and that hence the 1917 rule could not be invoked.

In the spring of 1949, Senators interested in civil rights legislation knew that in order to get it before the Senate they would have to amend the closure rule and make it apply not only to "pending measures" but to "motions to consider" and to everything else. On a motion to consider proposed amendments of the closure rule, there was another filibuster, which continued until the Southern Senators (who have always filibustered against civil rights legislation) agreed to a rule that was satisfactory to them.

The Senate will now be able to bring debate to a close on any "measure, motion or other matter" by an affirmative vote of "two thirds of the Senators duly chosen and sworn"—not two thirds of a quorum (one more than a majority of the members of the Senate), which was the requirement of the 1917 rule. This, it seems to me, is not of great importance. If the rule were invoked on a highly controverted matter, substantially all of the members of the Senate would be present. It is highly ironical, however, that after labouring to tighten the 1917 rule so as to impose a check on all filibustering the Senate ended by somewhat liberalizing the rule as it applies to legislation. Moreover, as the price of their concessions on "motions", the Southern Senators insisted that the new rule would not prevent their filibustering against proposals to change it.

Nevertheless, as I have said, Senate filibusters have never killed or seriously delayed important legislation that the country really desired.<sup>1</sup> Perhaps I insist on this because I belong to a school which believes that special considerations justify the fact that, alone among the world's legislative assemblies, the Senate of the United States cannot end debate when a majority of those present and constituting a quorum wish to do so.

To protect sections as well as states was one of the reasons

<sup>1</sup> I doubt whether the country really desires federal civil rights legislation to be imposed on dissentient Southern states. Non-Southern states have refused to approve such legislation for themselves in referendum votes.

why the framers of the Constitution provided two Senators for each commonwealth irrespective of its size. Happily, as I have said, there have been no important political issues on which the populous states have had opinions opposed to those of the smaller states. Nevertheless the Senators from states composing a great section of the country, although only a minority in the Senate, have a right to endeavour to prevent legislation unpalatable to them and their constituents. I think they are justified in using parliamentary tactics to keep the legislation from coming to a vote unless two thirds of the Senators wish to override them. From this point of view, filibustering is a weapon that Senators will use when they think that the states they represent will not be protected by the Supreme Court of the United States.

Moreover, with the American Executive holding office for a fixed term and never appearing before the Legislature to account for his actions, it is desirable that there be some place in the Congressional system where the party steamroller will meet an effective barrier. The House of Representatives cannot serve this purpose. Debate there can be more severely limited and freedom of decision more restricted than in any other legislative chamber in the world. If a party majority could similarly shackle the Senate the Chief Executive might be able to escape uninvestigated and thus unscathed.

In the administration of President Harding, for example, the Republican Party machine was powerful enough to prevent any investigation of maladministration by a House Committee, and Republicans in the Senate were not anxious to be inquisitors. Only because the Senators, who insisted on an investigation of the scandals, could filibuster and hold up all business until investigations were authorized did the Senate consent to inquiries. The American President never comes face to face with Congress, which should therefore, on occasion, through its committees, be able to act as a High Court. The Senate's refusal to limit debate save by a two-thirds majority of Senators duly sworn is a guarantee that when the occasion demands, party discipline or prestige will not suffice to keep the Senate from deciding to be a High Court.

## THE SENATE DURING AND SINCE THE WAR

by ELBERT D. THOMAS

*(Senior Senator from Utah; Chairman, Committee on Labour and Public Welfare).*

FOR the British reader and even for that reader among the British who has learned his American Government from our textbooks there are a few things that must be kept constantly in mind or he will misinterpret our governmental processes and our words in relation to them. First of all, while we have separation of powers in our government it is not the same separation that Polybius thought he saw in Roman Government, nor is it the same separation that Montesquieu thought he saw in the British Government. And I am sure that our own Founding Fathers who thought that liberty could be maintained through a separation of powers never foresaw what has taken place in the evolution of the American Federal Government.

Constitutionally, we definitely have the separation. The Constitution says that legislative powers shall be in the Congress, the executive powers in a President, and that the judicial powers shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain. Thus the picture as given in the Constitution, to those who talk and do not see, is a pretty one and results in assumptions that make our governmental processes too simple. There is a separation to be sure, but that does not mean that we have a government of three distinct compartments and that there is no intermingling of powers. Judges do make law. Executive action and decisions bring the equivalent of law, and both Congress and the Executive have much to do with the making of judges in that the President appoints but his appointments must be confirmed by the Senate.

The growth of the executive department compared with

the growth of the courts and the legislative branch has been so great, especially during and since the second world war, that to call it a balance would be a misnomer, and to assume that the combined power of the legislative and the judicial branches could act as an equal check would be an assumption that would be hard to prove. But this much must be said. There is only one Government of the United States of America. Sometimes the Executive has his way. Sometimes the Courts have their way, and at times even Congress has its way. But despite the fact that the American tradition is that our government shall be a government of law and not of men there really is not much the law can do after men get a hold of it. In this the spokesmen for the American people acquiesce. They, of course, would deny it. It is easier to imitate a great oration of one hundred years ago than it is to think of a speech of your own.

If the legislatures counted for much in the American scheme, sometimes a university president might recommend a legislator for an honorary degree. But that he seldom does. The administrators of a good law have shoulders bent with the weight of honorary degrees just as our "brass and brain" seem to have lost all ideas of wearing a jacket for utilitarian purposes and seem to have the idea it is merely "a something" on which to hang ribbons. In the political field in the United States an almost universal tendency exists to blame Congress for almost everything undesirable in the life of the nation. Probably this is true because under the Constitution and by the almost untrammelled votes of our citizens, the men and women who sit under the Dome of the Capitol have been assigned the function of interpreting the desires of these citizens and of making the policies which supposedly carry them to fruition.

Political parties in America are not professional. The representatives of the people in the Senate and the House must be inhabitants of the states from which they come. That simple device written into our Constitution gives us in practice no national parties as such. The Democratic Party is nation-wide to be sure, and the Republican Party recognizes

the whole of the nation in its national conventions. In reality, there are forty-eight Democratic Parties which unite once in every four years in an attempt to elect a President and there are about thirty-seven Republican Parties which attempt the same thing every four years. The Republican Party in the South-Eastern part of the United States is a factor in the nomination of the Republican candidate for President, but with the exception of the election of 1928 Republican influence south of the Mason-Dixon line has not been great since the Republican Party came into existence. The Democratic Party, although universal as far as its name is concerned, is not a unit when its representatives reach Congress. There is a great deal of difference between the Democratic Party in Virginia, for example, and the Democratic Party in Utah or Colorado.

When I say that our political parties are not professional I mean to point out that leadership in them does not persist within the state or the nation as it does in most European political parties. In some of our cities we have a political boss, as he is called, who seems to go on in defeat quite as much as in victory because there is seldom a clean swept victory. There is pretty generally a councilman or a commissioner left, and he has access into the city's affairs which gives him a sort of continuity of powers. We speak of a losing President as a man having titular headship in our national parties. But this headship amounts to much or it amounts to little according to the man.

Our political parties are not professional in another sense. They are even strongly traditional. They are not built upon economics. Their fundamental principles are generally clear enough cut after a review of a half century of Democratic or Republican stands or platforms. Members of the same family belong to different political parties. The great independent vote is a factor. There is much going and coming in the parties, and the fact that nationally the parties only express themselves once in four years, the man who has not an urge does not do much about politics in between those elections, and in many instances he votes for the man and not the party.

Now to discuss the Senate. The Senate came into existence as one of the compromises of the Constitutional Convention. While it was not pointed out that we were actually writing into our Constitution the rottenest form of "rotten boroughism", the American people have not realized that we instituted the equivalent of a "rotten borough" system. The inequality of a representation wherein we limit each state to two Senators does not seem unequal to us because our Federal Government must of necessity emphasize the theory of the equality of states. The functions of a Senator are so much more national in their scope than they are local that the American people have never been aroused into feeling that the Constitution established an unjust system of representation. And especially do they feel this because representation in the lower House is based upon population. There are lots of tempering influences in the make-up of the Senate which makes it possible to recognize a sort of equality among the Senators despite the differences of their constituency. When we think of little Rhode Island and overly large Texas, when we think of wealthy New York and poor Mississippi, when we think of populous Illinois, Virginia, and California and compare them with Utah, Nevada, and Arizona we cannot sense equality. But it is there. The voting power is equal. The Senator of ability does come to the top regardless of the size of the state he represents.

Then there is the seniority principle. The Senator from the smallest state of the union may become chairman of the most powerful committee in the nation. The power of a committee, of course, is always relative. The Military Affairs Committee becomes very much more important during war. The Finance Committee which handles taxation looms important in depression times or whenever there is to be a change in a taxation law. The Foreign Relations Committee becomes important or dims in its importance as America moves into or out of world affairs.

Since the Reorganization Act of 1946 there has been more equality between the committees than there ever has been in the history of the Senate. In reducing the number of committees

and multiplying their functions there are now no unimportant committees. All have great powers. The ironies which are reflected in any reorganization endeavour have come to the fore in this Reorganization Act. For example, there were two committees which were deemed relatively unimportant, so much so in fact that in the limiting of Senators to two committees an exception was made in the case of what were thought to be two unimportant committees wherein deviation from the general rule was made, and a Senator could serve on three committees if the third committee happened to be either the Committee on the District of Columbia or the Committee on Expenditures in the Executive Departments. Both of these committees, since reorganization, have become very important; the District Committee because of the question of "home rule" for the District of Columbia and the Expenditures Committee because it has taken on so much of the investigatory functions of the Senate. The "home rule" question brings up the whole range of civil rights and the white and black issue, which on analysis are nation-wide in scope.

What I said about the varying power of Senate committees was so apparent during the war that men who were not on the Services Committees, or the Foreign Relations Committee, or the Appropriation Committee, were not much in the mind's eye of the people, and they were not overworked as were the persons on the committees which became war committees. This, in and of itself, would have developed a condition demanding reorganization.

The war may have been a great contributing factor towards bringing about the reorganization of Congress, but reorganization would have come had there been no war. This is proved by the fact that there has been for years a Committee on the Reorganization of Congress functioning in the American Political Science Association and several committees, non-official in their nature, which were organized for the purpose of bringing about this reorganization. Some of these committees had the force of lobbies. But the conditions in Congress itself would have brought the reorganization on.

Before reorganization, there was no hard and fast rule

about how many committees there should be or the number of Senators who should serve on the committees. Then there was the necessity for increase in pay and extending Civil Service retirement rights to members of Congress, and a score or more of factors which seemed to have just grown up. All of these things helped in getting a committee on the reorganization of Congress started. But even then we were not allowed to work in all fields connected with reorganization. We were limited in our functions to such an extent that we could not suggest a change in the rules of procedure. The rules of procedure can make for abuse quite as much as laws dealing with the structure of a body.

In our reorganization committee we talked about doing away with the seniority rule and making it possible for chairmen to be selected on the basis of merit or knowledge of a given function of government rather than on the basis of seniority. When we got through discussing the question we discovered that seniority had just as many advantages as disadvantages. The rivalry now comes in getting on a committee rather than attempting to control it. Since the reorganization rules took from the chairman of a committee and placed in the committee itself the power of organizing the committee assistants, much of the power of seniority has been taken from the chairman.

Because of the bulk of the executive department, Congress felt itself relatively weak in dealing with the recommendations of the Executive even in the matter of law making. Therefore, through reorganization, experts of a very high calibre were added to the committee staffs and given good salaries so that we could withstand the pressure of expert advice coming from the executive departments. This may or may not have been accomplished, but at any rate we are, if we want to be, dependent only on our own and in every way independent of the executive pressures. Congress has accepted this new responsibility in a rather healthy way. The wise chairmen have not turned their backs on the executive aid but they have better facilities for scrutinizing suggestions and recommendations. Thus we attempted to make the checks and



balances system function a little better. Net gains at this date show themselves in the words used by representatives of the executive departments. Sometimes these men go so far as to say: "That is for Congress to decide."

Is the Senate of the United States a stronger body as a result of reorganization? I say it is. But it is not in the reorganization alone that the Senate has changed. The Senate's importance and its relative unimportance to the people of the United States and now to the people of the world is reflected in what the Foreign Relations Committee has done and what it is attempting to have done in the world. When I take note of the closeness of voting in the Senate and the number of tie-votes, I realize the importance of a Senator. A Senator looms now, in the councils of the world, very much more important than he ever did. I think I can safely say that without the aid of a sub-committee of the Senate there would probably have been no Dumbarton Oaks Conference, no San Francisco Conference, and no United Nations. It was the power of Senators that kept us out of the League of Nations and the major attempt towards world organization in 1919. The Senate's power then was negative. It was in reality a veto. The Senate's power since the second world war in international relations has been positive. It will, of course, never be given credit for initiation, but some of our Senators were very strong initiators. I question whether the strength of the American Government and America's leadership in the world today could have occurred without Senatorial initiation.

This bit of history has been told elsewhere but it is proper to repeat it here for non-American readers. After November 15, 1947, the Foreign Relations Committee met almost daily, both morning and afternoon, and sometimes on Saturdays, to hear testimony, reports, and to rewrite the European Recovery bills. In the present Congress, similar meetings have been held to enact the renewal of E.R.P. and E.C.A., and to work out the legislative approach to the Atlantic Pact, the Wheat Treaty, and Reciprocal Trade Agreements. What is particularly to be pointed out is that there has been almost full

attendance of all committee members at all of these meetings, which never could have happened under the old arrangement. In the writing of history I am sure the Second Session of the 80th Congress, as well as the First Session of the present Congress, will be remembered by these pieces of legislation if for nothing else. We could not have written bills as good as these nor have given sufficient time to study and thought for these tremendous undertakings on the part of the United States had Congress operated as it did before its reorganization.

Not all the popular criticism of Congress is always justified. In my opinion the failure of numerous Congresses in our history to act in accord with the President's promises to the people in winning elections do not or have not justified the phrase "rubber stamp" Congresses. The fact that the President is given by the Constitution certain legislative powers connected with approving or vetoing legislation, and is directed to make legislative recommendations to the Congress, indicates that co-operation between the executive department and Congress is essential for the American republican form of government. History has shown us on several occasions that when a Congress is predominantly made up of members of the party opposed to the President, neither the executive nor the legislative branches make headway, and the people's will is neglected more than at any other time. It must be remembered, however, that both the executive and legislative branches are distinct and under our system they must be kept distinct; and that Congress is specifically given powers to supervise the conduct of the executive department and, in the final analysis, to make the national and international policies which must be followed by the President and his assistants.

In this area, an act of the 79th Congress in addition to the Reorganization Act followed the same general effort to reorganize. To strengthen party responsibility, Senate party policy committees (both majority and minority) were authorized. The House of Representatives did not see fit to approve this part of the joint committee's recommendation. Therefore, at present, there are not policy committees in the

House. Senate policy committees have no direct supervision of legislation, reporting or voting, nor do they bind individuals or committees to any course of action; but through these committees, party policies or position can be clearly stated and alternative policies can be developed. Thus, through a consideration of national problems as a whole, greater emphasis can be placed on the nation's welfare as against special or sectional interest, and legislation which otherwise might be considered of only secondary importance is given general leadership.

Another feature of the policy committee plan is that, by combining with the President and his Cabinet, a joint Legislative-Executive Council could be formed, and in some instances the minority party policy committee could be included.

Of course, the degree of successful planning of the Joint Council would depend greatly on the personalities involved. But under this scheme fourteen members of the Senate would be taken into counsel with the President and his Cabinet, and Cabinet members would have an opportunity, for the first time in our history, of participating directly in forming a unified legislative programme. Through this procedure, clashes between legislative and executive branches could be avoided. To my knowledge, President Truman has not yet taken advantage of this facility. Had he done so there would have been no need for the occasional clashes between him and several members of Congress which have occurred.

The best illustration of what can be accomplished along this line is the story of liaison with the Congress and the State Department which took place during the war and the emergency period just prior to it. In the summer of 1939, when it appeared to many that war in Europe was certain, the President of the United States asked for a change in our Mandatory Neutrality Act. This the Foreign Relations Committee denied. The reason given by the majority of the committee was that war would not come. When the new Congress convened in January, 1941, this action on the part of the Foreign Relations Committee was pointed out. Lend-Lease was in the offing and it was suggested that the Admini-

stration could not take a chance with that vital issue. As a member of the Committee on Committees of the Democratic Steering Committee, I suggested that no new Senator should be put on the Foreign Relations Committee, that Senators representing strong committees should be there so that if the President wished to use the Foreign Relations Committee as a Council of State, he would have such an organization. George Washington assumed that the Senate as a whole, when it consisted of merely twenty-six members, might act as such a Council. The Foreign Relations Committee in 1941 consisted of twenty-three members.

It was thought by some that Senators of long standing would not give up their seniority on other committees to serve in a lower position of the Foreign Relations Committee, but both Senator Glass and Senator Byrnes accepted the proposition. Senator Glass told me later how grateful he was for the opportunity it gave him to serve his country. The Minority Party (Republican at that time) also accepted the theory and Senator Austin gave up his ascendant position on the Judiciary Committee and accepted a lower place on the Foreign Relations Committee.

With this reorganization of the Foreign Relations Committee, the President had a Council of State if he wished to use it, for the committee then consisted of both majority and minority leaders and the chairmen of the following committees: Foreign Relations, Banking and Currency, Military Affairs, Education and Labour, Inter-oceanic Canals, Appropriations, Audit and Control, Pensions, and Public Lands, and in the course of time the majority party whip. Even after the reorganization of the Foreign Relations Committee, lend-lease was reported out of committee by just a one vote majority.

No sooner were we in war than I suggested that plans for peace should run along simultaneously with the development of the war. Soon afterwards Mr. Hull, Secretary of State, appointed a committee of experts to study for peace. A small group of Senators and Representatives were invited to meet with Mr. Hull, and Mr. Welles and these experts. Senator

Connally, chairman of the Foreign Relations Committee, appointed a sub-committee of eight Senators to consider any proposition for peace which might be referred to the committee. This committee of eight met regularly. At the time of its first meeting seven of the eight were opposed to doing anything about planning for the peace while we were at war. At the time of the reporting out of the Connally Resolution seven of the eight favoured that Resolution. This changed attitude, I am sure, came primarily because those of us serving on this committee were daily struggling with this great problem and became convinced that a constructive start was necessary. Thus, through the Connally Resolution, Congress spoke in favour of world organization to prevent war. The Dumbarton Oaks Conference was called. The Hot Springs Conference on Food and Agriculture was called. The International Labour Organization came to America in 1941 and then again in 1944 for the great session where it adopted the Declaration of Philadelphia. The San Francisco Conference was called and the United Nations Charter was worked out, providing for various branches of international activities under the Charter. The Senate ratified the Charter. The Senate ratified the Constitutions of the United Nations Food and Agricultural Organization and the United Nations Educational, Scientific, and Cultural Organization. These were all done while we were still at war. And before the world was legally at peace, the Senate of the United States acted on the compulsory jurisdictional provision of the International Court of Justice. In the formation of all of these international organizations the voice of the American people was heard through their elected representatives.

Without constructive leadership in the Senate of the United States these things could not have been accomplished. I emphasize the Senate's part in this programme because it has all too soon been forgotten, but most of all to show how much can be accomplished through the proper functioning of the policy committees provided for in our new organizational set-up of Congress, if they are used.

Here is another aspect of the Senate's activity in inter-

national organization: As early as 1935, in a conference made up of the Under Secretary of State, Mr. Sumner Welles, the President of the Foreign Policy Association, Dr. Raymond Leslie Buell, and myself, I advocated a closer relationship between the Senate and the State Department and the executive. I even suggested the use of Senators as negotiators of treaties and conventions because, inasmuch as the Senate has the last word on treaties, it should have a few first words too. The first reaction to this idea was cold, but eventually Senator White was sent to Cairo; I was appointed to the I.L.O. Philadelphia Conference; Senators Connally and Vandenberg were appointed to the San Francisco Conference. Senators Murray, Chavez, Austin, Wagner, Tobey and Brewster were appointed to other conferences, and much good has been accomplished through our attendance. This practice provides for a better understanding on the part of the Senate of treaties that are to be ratified and helps in their ratification. The practice also has contributed greatly to what has become an accepted idea of both major political parties—that foreign relations should be carried on as bi-partisan or non-partisan activities.

Has the power of the President been made less effective because of his partnership in action with the Senate? Has the power of the Senate been affected adversely because of its close connection with the executive in our foreign policy? Not even the old-fashioned stickler for the absolute separation of powers in our constitutional theory can point out any evil result coming from this close relationship. International relations are not relations which are aloof and far off. They are relations which affect the homes, the firesides, and the people quite as much as any wholly domestic question. The bringing of the people closer to these problems through the action of the people's representatives in no sense does violence to our constitutional scheme or its theory.

I recite this bit of history to show that the proper functioning of these policy committees cannot be over-emphasized. They are important because they provide facilities for creating a unified legislative programme, over-all planning and party

responsibility. Much of our Congressional weakness in the past has been due to the lack of responsibility for a comprehensive programme.

Did you ever realize that we do not know who invented the atomic bomb, that the power given to groups to work towards invention was granted by a small group of representatives of the American people who had become convinced that it was possible? Was it the force of the President which caused the Congress to say, "Here are two billion dollars, go ahead, experiment"? No President would have dared to have done it had he the two billion dollars. No university would have been brave enough to have done it had it the two billion dollars. And no scientist by himself would have undertaken it had he the two billion dollars. But when the representatives of the American people said, "You go ahead and we will not talk about it", something too remarkable for words occurred. Rivals in political parties and all that that means, representatives who like to talk and express their point of view and point out mistakes in others and all that that means, remained true to a trust. They did not talk about the bomb or the experiment. The manufacture of this bomb of trust and its fulfilment in a democracy where all that a government does is the business of the people is as remarkable as the invention of the bomb itself. The invention of the bomb represents the combined strength of nature and the people.

The power of the representatives of the people may again be shown. Another committee with survey possibilities has come into existence. The Chairman of the Foreign Relations Committee has appointed me chairman of a sub-committee on resolutions relating to the United Nations Charter, world federation, and so on. From the actions of this sub-committee may come a future equivalent of the Connally Resolution of 1943 and the Vandenberg Resolution of 1948; one the forerunner of the United Nations and the other the forerunner of the Atlantic Pact.

## THE HOUSE OF REPRESENTATIVES

by CHRISTIAN A. HERTER

*(Member of the House of Representatives for 10th District, Massachusetts;  
Member of the Committee on Rules and the Joint Committee on the Economic  
Report; Vice-Chairman of the Select Committee on Foreign Aid)*

EVERY two years in the United States on the first Tuesday after the first Monday in November in even numbered years an election is held in each of the forty-eight states for the purpose of choosing Representatives in Congress. A total of 435 members are sent to the House of Representatives from all over the United States, elected by a plurality vote from among the nominees presented by the different political parties.

Unlike the upper body of the Congress, the Senate, where representation consists of two Senators for each state no matter what its size, the number of Congressmen from any given state is determined on a population basis. This may provide those states with small populations only one representative in Washington, as in the cases of Delaware, Nevada, Vermont, and Wyoming, while the large and more densely populated states send many more. New York State, for instance, has forty-five representatives in Congress. In addition, a Delegate is sent from Hawaii and from Alaska, and Puerto Rico has a Resident Commissioner in Washington. These three are permitted to participate in the debates and to sit with committees, but do not have the right to vote.

In order to be eligible as a member of the House of Representatives, a candidate must be twenty-five years of age, must have been a citizen of the United States for seven years, and must be a resident of the state which he represents. Although he usually is a resident of the district in that state which he is representing, it is not required that he be so.

After having been elected, a Representative reports to Washington when each new Congress convenes early in



January. Offices and complete office equipment are assigned to him in either one of the two Congressional office buildings, and in addition he is entitled to free office space in the most convenient Post Office Building in his own district. In Washington he is allotted two rooms—one for himself and one for his staff. The amount of staff he requires depends in large measure on the type of district he represents, the committee to which he is assigned, and, after he is a little more established in the Congress, the issues in which he takes special interest. He may find that one competent secretary can handle the work load, or he may find it necessary to have five secretaries and clerks. It is not usual, however, to have as many as five on the staff of his Washington office because most members maintain an office in their home district where constituents can receive advice, information, or help.

The pay of a House member is \$12,500 per annum. He also receives tax free an annual expense allowance of \$2,500, stationery allowance of \$600, telephone and telegraph allowance of \$500, and travel allowance consisting of twenty cents per mile for one return trip between his home residence and Washington. His allowance for secretarial help comes to about \$20,000 per year. If he should be a committee chairman, he is entitled to a larger office suite and more assistance.

At the beginning of his two-year term of office, each member takes the oath of office as follows:

“I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me, God.”

I have cited this oath only because of its emphasis on the Constitution of the United States. A few years ago a President urged the Congress to pass a piece of legislation no matter what doubts the members might have as to its constitutionality. He also tried to enlarge the Supreme Court so that he could

appoint enough new members to ensure the constitutionality of some of the legislation he was advocating. The constitutionality of legislation is an unending source of dispute, but the existence and sacredness of the Constitution has held the Federal Union together on many occasions when the states might easily have parted company.

After the people of the United States have elected their Representative, they are not content to remain silent. Since they are directly affected by many of the decisions made in Washington, they send a steady flood of letters and telegrams urging him to support this issue or oppose that one. A member may get from a thousand to fifty thousand letters in a session from his constituents. If he is a good politician, he will try to answer every letter, no matter how foolish or irritating its contents. After all, he has to run for re-election in two years. A good staff can do much for him, but the physical labour of supervising the handling of as large a volume of mail as this requires a great amount of time and often great ingenuity. Each constituent feels that his opinions or complaints are important, and unfortunately he has been brought up to believe that most of the troubles of the world, as well as his own troubles, can be solved by "writing your Congressman". It is not unusual to be asked to hunt down the individual who put chewing gum into a package of frozen strawberries and to pass a law to punish him. It is a commonplace matter to be asked to find suitable employment for a constituent or members of his family—not necessarily on the public payroll, but in private establishments. At a guess, I would venture that not twenty per cent of a member's mail deals with legislative matters, except at such times as a strong pressure group puts on a special mail campaign. A much larger percentage is of the "errand boy" variety, requiring contact with the many government departments on such matters as civil service ratings, veterans' benefits, tangled accounts, passports, naturalization cases, government contracts, etc.

Over and above the more normal duties, members are often asked to arrange for hotel or travel accommodation for their constituents, besides acting as guides to the spots of

interest in Washington and furnishing free entertainment. High school children seem to indulge in endless debates, the material for which is expected to be supplied from their Representative's office, while the capacity of constituents to absorb free pamphlets published by the Government on every conceivable subject is inordinate.

If I have laid undue stress on what might be called the extra-legislative chores of a Representative, I have done so only to explain the riddle which puzzles so many visitors to Washington; namely, the small number of members who are seen at any given time on the floor of the House, even when important debates are in progress. An elaborate system of bells brings them to the floor whenever a roll-call vote is ordered or when some member protests the absence of a quorum or when the majority and minority whips send out urgent telephone pleas because a vote on some important amendment is about to come up. The rest of the time (i.e., after twelve noon when the House meets each day) most of them remain in their offices to keep abreast of routine work.

Most of the work of the House is done in committees. Every bill filed must be referred to some one of the standing or regular committees. Every member serves on only one of the major committees of the House, of which there are fifteen. Majority members assigned to one of these cannot serve on any other. These committees are on Agriculture, Appropriations, Armed Services, Banking and Currency, Education and Labour, Foreign Affairs, Inter-state and Foreign Commerce, Judiciary, Merchant Marine and Fisheries, Post Office and Civil Service, Public Lands, Public Works, Rules, Veterans' Affairs, and Ways and Means. Having been assigned to one of these, a minority member may be asked to serve on one of the minor committees—District of Columbia, Expenditures in the Executive Departments, House Administration, and Un-American Activities.

Of all these committees, probably the most important are the Appropriations Committee and the Committee on Ways and Means. All bills having to do with the appropriation of money must originate in the House of Representatives. The

Appropriations Committee reports out all legislation carrying appropriations—this year amounting to a total of over forty thousand million dollars. The Ways and Means Committee is responsible for all legislation having to do with the raising of revenue, tariff, or any sort of taxes.

Each committee meets regularly or on call by the Chairman to consider the bills that have been referred to it. Committee Chairmen and the Administration leadership decide which bills are of major importance and in which order they should be given consideration. On these bills, public hearings (all of which are printed) lasting several days or several weeks are held so that interested individuals can testify before the committee for or against the proposed legislation. The committee then considers the bill and submits its report to the Congress. The bill can be reported out in exactly the same form in which it was introduced, it can be amended in committee, or the committee may decide not to report it out at all. When a large number of different proposals on the same subject have been submitted in bill form to a committee, that committee may hold hearings on all the proposals, and at their conclusion may incorporate the best provisions of each bill into a new bill which the committee writes and some senior member reports out. If the committee, on the other hand, delays action on a bill or decides not to report it out at all, a petition to have the bill discharged from the committee can be filed by any House member. Then, if 218 members (a majority of the entire House) sign the discharge petition, the bill is brought up directly on the Floor without committee action.

As each bill is reported from the committee, it is placed on the calendar where it belongs and is then brought before the House in its proper order. Bills which are of minor importance and essentially non-controversial are disposed of from what are known as the Private Calendar and the Consent Calendar when these Calendars are read on alternate Mondays and Tuesdays. They consume very little time. Controversial and important bills are brought before the House under special rules. The latter are granted or rejected by the Rules Committee, a small committee consisting of only twelve members—

eight from the majority party and four from the minority.<sup>1</sup> This Committee is, in effect, the traffic director for legislation. It has power to grant or refuse a rule, decide on the hours of general debate commensurate with the importance of a measure, what technicalities should be waived or whether amendments can be offered. Each rule granted by the committee must be accepted by the House after one hour's debate before the bill for which it was devised can itself be debated. In theory, at least, the Rules Committee is a steering committee for the majority party, but in recent years it has refused rules on so much legislation, thereby blocking it, that the present session of Congress clipped its wings by providing for an appeal from its decisions if such appeal is made by the chairman of the committee asking for a rule and after the appeal has been filed for a period of twenty-one days.

Once a rule has been voted by the House, the House then resolves itself into the Committee of the Whole House for consideration of the bill itself. This procedure merely consists of having a chairman, selected by the Speaker, preside over its deliberations, with one hundred members instead of two hundred and eighteen a quorum for the transaction of business. General debate then ensues for the length of time provided for in the rule, with the majority and minority dividing the time in equal amounts. The Chairman of the Committee which has reported the bill and the ranking minority member of that committee have complete control over the time for their respective parties and can allot as much or as little of it as they desire to any member. Other committee members are usually given preference.

As soon as general debate on a bill has concluded, it is then read section by section by the Clerk, and amendments can be offered to each section or substitute bills which are germane can be offered to the whole bill. During this time, no member can speak for longer than five minutes or more than once on an amendment. Amendments are accepted or rejected by voice vote or by a count of members passing

<sup>1</sup> The other standing committees average twenty-five members, with the exception of the Committee on Appropriations which has forty-five.

between tellers in the centre aisle of the House. No roll calls are permissible in the Committee of the Whole, but as soon as the amendment stage is over, that Committee, through its Chairman, reports to the full House what has been done. At that time, members can ask for a roll call on any amendment which has been adopted by the Committee of the Whole (not those which were rejected) or on the bill as amended. The minority side has the privilege of offering one motion to recommit the bill (which would kill it if adopted), or to recommit with instructions to the committee to report it back immediately with some germane amendment.

If passed by the House, the bill then goes to the Senate for its consideration and action—and vice versa, except in the case of appropriations bills. Should there be differences in the bill as passed by the Senate, the House may take up each amendment separately and may vote to agree to it, agree to it with amendment, or disagree. If there is disagreement, the bill then goes to a Committee on Conference made up of selected members from both the House and the Senate. This committee works out the differences in the two versions and their agreement is embodied in a report. When the report is submitted on the Floor, the House accepts or rejects it. If the former, it then goes to the President for approval and signature (assuming that the Senate has also accepted the report). If the latter, it goes back to the Committee on Conference for further discussion.

Such, in brief and inadequate form, is our legislative procedure. During the two-year term of a Congress, a tremendous number of bills are introduced. To date, the all-time record was reached in the 61st Congress (forty years ago) when 33,015 bills were filed in the House and 10,897 in the Senate. A more nearly normal figure for both branches is roughly 15,000. Approximately one in ten of those introduced is likely to be enacted into law, of which not more than thirty or forty are of real national import.

Political scientists are continuously debating what most of them consider to be the outmoded procedures under which our form of government operates with the constantly increasing

work load which it is taking on. They claim that it is not geared to modern times and Congress is singled out from the administrative and judicial branches for particular criticism. Some of the fault-finding is laid on the doorstep of the Senate for its endless debate and filibustering. More is directed at the House because of its size and unwieldiness. For the two together there is a natural impatience because they often operate at cross purposes with the administrative side of the government and with each other, and spend considerable time in probing the actions of administrative officials or administrative bodies. All of the criticisms, however, really narrow down to a question not so much of the performance of an individual Congress as of the organic law, our Constitution, which defines the relationship of the Congress to the Administration.

It is true that the conduct of our foreign affairs is seriously impeded by the fact that nearly every move in our present position as the world's great creditor nation requires some form of appropriation which must originate in the House. It is also true that the House has until recently played so small a part in our foreign affairs as to be very imperfectly geared to deal with them. It is likewise true that the great power vested in committee chairmen highlights the disadvantages of a seniority system which often places a man of inadequate capacity or actual hostility to the Administration in command of a key legislative position. All of these defects in our system cannot be effectively remedied unless we dig much deeper than procedures. The fault lies in the rigidity of the tenure of office of our President and in the impossibility of making the President responsible to the Congress or the Congress a part of a working team with the President. Only a drastic constitutional change can do this, but there are improvements which could be made without such a change.

Certainly much time could be saved if Senate and House committees could hold one set of hearings under joint sponsorship rather than as separate competing entities. In January, 1949, Mr. Paul Hoffman, the Administrator of the European Recovery Programme, together with top members of his staff, began his testimony on the second year's

authorization and appropriation for E.R.P. In September he was still testifying. His principal function, that of an Administrator, had to be subordinated to that of being a constant and key witness before four separate committees of the Congress. In similar fashion, Cabinet officers and other high officials must be prepared month in and month out to testify on matters of legislation or investigation.

Then again there is the matter of party responsibility inside the Congress. Democrats elected from the Southern States are as conservative in their philosophy of government as the most conservative Republicans, yet they bear a different party label. What in theory looks like a Democratic party majority at the present time is on many issues a minority. Even in the powerful Rules Committee of the House where the Democrats outnumber the Republicans two to one, the actual control lies in the hands of the four Republicans and three Southern Democrats who, on practically every question coming before the Committee (except civil rights legislation) act as a unit.

In spite of the defects I have cited, and in spite of the absurd amount of time legislators have to devote to matters other than legislation, the system still has great merits. The House (and the Senate too) is generally most responsive to public opinion—yet in the cumbersomeness of its operation avoids the pitfalls of over-hasty action. By having to return to the electorate every two years, it constantly receives a fresh mandate from the people, whereas the President with a four-year term, and Senators with a six-year term, are never so sure of their mandate. It can be argued that elections coming so often are a deterrent rather than a spur to good legislation, but as long as there is no provision for the dissolution of a government, as there is in most responsible parliamentary democracies, this opportunity for the people to be heard every two years is essential. While the House of Representatives seldom produces the type of historic debate for which the House of Commons or the United States Senate are famous, it nevertheless acts as the principal workshop through which the will of the American people is translated into law.



## THE DEVELOPMENT OF THE COMMITTEE SYSTEM IN THE AMERICAN CONGRESS

by ALLAN NEVINS

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THE United States now has a "streamlined" Congress. It is considering the creation, under the recommendations of Mr. Hoover and his associates, of a "streamlined" Executive. Yet the more the national government changes, the more in some respects it is the same thing. Particularly does this seem to be true of Congress and its committee system.

The 80th Congress, the first to operate under the reorganization prescribed by the LaFollette-Monroney Act, was attacked by President Truman as the worst in the nation's history. If the results of the national election in 1948 furnish any indication, countless voters shared his opinion. The 81st Congress has been under almost equally scorching criticism for its blundering tactics, dilatory movements, and general delays. Instead of getting through its programme by July 31, as the authors of the Legislative Reorganization Act had expected each Congress to do, the close of summer in 1949 found it struggling in a morass of unfinished work, and its leaders threatening to keep the tired members in session until Christmas. Despite all efforts to give it greater efficiency, the Senate in the first six months of the session had spent almost one-seventh of its time in quorum calls. The *New York Times* on August 24, 1949, scolded Congress in old fashioned terms. The voters, it remarked, must find some means of getting assurances from Congressional candidates that "they will conceive it their duty to legislate rather than to quibble, delay, obstruct, and indulge in useless talk."

Throughout national history the committee system has been the flywheel in the more and more complicated mechanism of Congress. To be sure, committees are no longer quite

the all-powerful agencies they were when Woodrow Wilson in 1885 protested against their control of the government, and called for a stronger Executive leadership in Congress. Nevertheless, they are still unescapably the chief agencies by which Congress gets its work done, and hence the centre of legislative power. The power of the Speaker has waxed and waned. It was enormous under Thomas B. Reed and "Uncle Joe" Cannon, two strong men who held the gavel for most of the period 1889-1911; it was weaker under Champ Clark and Nicholas Longworth. The authority of Presidents over Congress has similarly risen, fallen, and risen again. It was great under Woodrow Wilson and Franklin D. Roosevelt, slighter under Coolidge and Hoover. But the standing committees retain their central place. The flywheel of the old-style Congress, they are still the flywheel of the streamlined Congress.

As Congress is largely a development from seed planted on American soil by English parliamentary practice, so the standing committees of Congress may trace their origin to colonial institutions. The early history of legislative committees in America, too long and complex to be traced here, is singularly interesting. In Tudor and early Stuart days, Parliament had shown a sufficient tendency toward the formation of standing committees to make the leaders of colonial legislatures familiar with the idea. Some of the colonial assemblies, as business increased, took up the system. Particularly did Virginia, Maryland, and Pennsylvania do a good deal to develop it. As friction between the assemblies and the Crown (or its representative, the colonial governor) grew, many legislatures also tended to evolve informal committees to manage their contests with imperial authority—small extra-legal bodies, often oligarchical in character, called *juntos* or *caucuses* or *rings*. The Continental Congress, uniting legislative and executive functions, necessarily gave the standing committee heavy emphasis.

The Federal Congress had hardly set to work under the Constitution than it found committees a necessity from the party as well as the legislative point of view. The two most

powerful House committees, as every American knows, are the Ways and Means Committee and the Rules Committee. The former was born as early as 1795 when Albert Gallatin, leading the Republican members in the House who opposed the Federalist measures of the Treasury Department formulated by the brilliant Alexander Hamilton, saw to the appointment of a Committee on Finance to superintend all appropriations and revenue measures. This body was a persistent critic and antagonist of the Treasury Department when the House majority and the Administration were in disagreement; a most efficient seconder of the Department when the House and Administration were harmonious. It grew into the Ways and Means Committee, which dominates the one great field specially allocated to the House as the Foreign Relations Committee dominates the field specially allocated to the Senate.

The way in which the able Gallatin established the power of his committee illustrates the general fashion in which such a body can make itself (if its domain is important) a prime factor in government. He saw to it that all reports from the Treasury, and all proposals for raising revenue, were referred to his committee. All estimates of appropriations for the coming year were laid before it. The Treasury was required to submit to it full comparative data on commerce, foreign and domestic, on imports and exports, on receipts and expenditures, and on debts and loans. Gallatin seized for the committee the right to report on the state of the national finances, on questions of revenue, and on the costs of each department of government—the committee thus operating heavily on public opinion. When a bill was brought in for granting money to set up trading posts with the Indians, already sanctioned by Congress, Gallatin insisted that his committee had power to review the subject. The House, he argued, had discretionary power to appropriate or withhold money for any object whatever, even if that object had previously been approved by the government as a whole. It need not be said that Gallatin made the committee a thorn in the flesh of Hamilton and the Federalist Party.

One by one, for party and legislative reasons, the important

standing committees came into existence. They have always varied greatly in dignity and power. Some committees which were once of high rank now count for little. With the Union almost complete (though Alaska and Hawaii stand on the threshold of admission) the Senate Committee on Territories now holds minor station. For most of the nineteenth century, however, it wielded great authority, and the deposition of Stephen A. Douglas from its chairmanship in Buchanan's Administration was a political shock which made the nation quiver. The principal House committees, apart from Rules and Ways and Means, are those on Armed Services (uniting the old Military Affairs and Naval Affairs), Banking and Currency, Commerce, Post Offices and Post-roads, Public Lands, and Labour and Education. The chief Senate committees, apart from Foreign Relations, are those on Appropriations, Judiciary (the Senate confirming all judicial appointments from the Supreme Court down), Armed Services, Finance, and Interstate Commerce. Sometimes a minor committee springs into sudden prominence. The House Judiciary Committee, for example, usually holds low rank; but of late it has been much in the public eye because legislation affecting displaced persons or refugees has come under its purview.

Historically, the number of standing committees has varied from period to period. In the first Administration of Theodore Roosevelt (in 1904, to be precise), the House had sixty, the Senate fifty-five. In the days of Herbert Hoover (1930), the number of House committees had fallen to forty-four, and the Senate committees to thirty-three. In Truman's first Congress, the roster had risen again to nearly one hundred. Some standing committees, of course, do almost nothing. Others dispatch a certain amount of routine work, which in some instances could better be done by executive departments. Still others rank among the great agencies of government, and are almost ceaselessly busy (often between sessions as well as during the sittings of Congress) with momentous affairs. As the business of Congress has become more technical and specialized, keeping pace with the

industrialization of the nation, committees have tended to grow more expert. Gone are the days when a Congressman could make such an entry in his diary as that which ex-President John Quincy Adams, just returned to Congress, wrote in the year 1831:

December 12.—Attended the House of Representatives. The appointment of the standing committees was announced, and I am chairman of the Committee on Manufactures—a station of high responsibility, and, perhaps, of labour more burdensome than any other in the House; far from the line of occupation in which all my life has been passed, and for which I feel myself not to be well qualified. I know not even enough of it to form an estimate of its difficulties.

Today the important committees are made up of persons who for the most part have some special knowledge in the appropriate field, and their chairmen nearly always have a recognizable fitness.

Without a large number of hard working committees, Congress could not possibly deal with the swollen flood of legislative proposals with which it is confronted. As long ago as 1890, when Speaker Thomas B. Reed seized almost autocratic power in order to expedite legislation, 7,000 or 8,000 bills were introduced in each Congress. The number rose until in the 61st Congress it exceeded 33,000. A rigorous effort to send private claim bills to judicial agencies has of late years caused a marked drop in the number of measures presented. The 68th Congress had only 12,474 to consider; the 69th only 17,415. The total, however, is still such that the primary function of committees is selection or screening. Every bill has to go to some committee. As soon as it is introduced, it is numbered and automatically sent by the Speaker to the proper body. Normally a great majority of measures die in committee. In the 67th Congress, for example, very nearly four-fifths of them never emerged from committee hands.

When Bryce made his last revision of *The American Commonwealth* in 1906, as for decades previous, the standing committees of the House were appointed by the Speaker. The memorable

revolt of 1910-11 against the czardom of Cannon changed all that. It had come to seem intolerable that one man should hold the keys to all the positions of political power in the House, and should come near to controlling the whole process of legislation. As a result of the "revolution", the new House rules set up a Committee on Committees to determine committee membership. A similar body exists in the Senate. Both Chambers go through the motions of electing committees, but inasmuch as the Committee on Committees has previously made the nominations, this is ordinarily little more than a formality.

But who chooses the Committee on Committees? In the House, the Democratic Party has based the Committee on the caucus. The Democratic caucus (that is, the whole body of party members) chooses the party members of the Ways and Means Committee; these members then make up the Committee on Committees. The Republicans have followed a different procedure. When they are in power, they base their Committee on Committees on geographic representation. The Committee has one party member from each state with a Republican representation in Congress (some Southern states commonly have none); and this member casts as many votes as there are Republicans in his state delegation. If Missouri has two Republican Representatives and Pennsylvania has thirty, the Missouri committeeman has only one-fifteenth as much voting power as the Pennsylvania committeeman. But actually the differences between the Republican and the Democratic machinery for choosing the Committee on Committees do not amount to much. The fact is that conferences of an inner group of party leaders largely determine the composition of the body.

So far as the selection of committees goes, the situation today is not vastly different from what it was when "Uncle Joe" Cannon, James R. Mann, and a few others controlled the House, while Nelson W. Aldrich, Mark Hanna, Orville H. Platt, and one or two more dominated the Senate. To be sure, the machinery has been made a little more democratic; the atmosphere of the two Chambers has been liberalized.

The leadership is more sensitive to the demands of the rank and file. But the party caucus, in the last analysis, determines party membership on the committees, and the party caucus is always dominated by a group of specially able, experienced, forceful men representing citadels of political power. These men know how to manage the caucus, and guide its selections. The conspicuous and influential committee chairmanships and memberships are assigned to men who have title to them—a title derived from seniority, expert capacity, power of hard toil, prestige as leaders, or skill in negotiation. The pulling and hauling, the bargaining and compromising, which arrange committee memberships, begin long before a Congress assembles. When the caucus is called to order, the committee slate is largely a *fait accompli*.

Ever since the beginning of the nineteenth century, when the House had (1802) only five committees, the principal committee chairmen have ranked among the major leaders of the government. Senator Stephen A. Douglas as head of the Committee on Territories was a great potentate in the 1850s. Representative Thaddeus Stevens as head of the Ways and Means Committee during the Civil War was another. Senators John Sherman and Nelson W. Aldrich as heads of the Finance Committee were later equally powerful. The nation will be long in forgetting the damage wrought by Henry Cabot Lodge as chairman of the Senate Foreign Relations Committee. Power tends to gravitate to such men. The ordinary member of Congress passionately desires the passage of some piece of legislation; he cannot get it so much as glanced at without the favour of some committee chairman. To obtain that favour he is ready to furnish loyal support to the general programme of the House or Senate leaders. The committee chairman cannot always block a bill that he dislikes; he cannot always get a favourable report on a measure that he likes. Usually, however, he can go far toward doing both. And he has power to call committee meetings whenever he likes, power to prepare the order of business for meetings, and power to represent the committee in party councils. No wonder that the leading chairmanships are regarded as great

prizes—particularly when Senate, House, and Presidency are, as in 1949-50, under the control of the same party, with a resultant ease (at least theoretically) in passing legislation.

The best way to gain a committee chairmanship—and indeed, thus far almost the only way—is by gaining a seniority of service on that particular committee. The “seniority rule” has seldom been defied. It is defended on the ground that men of long experience have a natural claim to direct affairs. It is attacked on the ground that long tenure is by no means a guarantee of high ability or great strength of character; that, in fact, many men hold their Congressional seats long because they are supple time-servers rather than men of power. Not infrequently seniority has placed an obviously unfit man in a vital chairmanship. In 1941, when the Administration was straining every nerve to send aid to Great Britain, Senator Robert R. Reynolds of North Carolina, a violent antagonist of the defence programme and of assistance to the British Commonwealth, became chief of the Military Affairs Committee. The outcry against him reverberated throughout the country. Seniority has made Senator Pat McCarran of Nevada head of the Judiciary Committee of the upper chamber. Particularly since he has shown himself opposed to liberal legislation for the admission of European refugees, he too has been fiercely assailed as unfit.

The seniority rule seems likely to remain in general force, however, if only because it prevents bitter personal rivalries, factional sniping, and heartburning; because, in a word, it is the best method of safeguarding party harmony. One of the greatest authorities on Congressional procedure, Representative Robert Luce, wrote years ago in its favour: “Promotion by seniority conduces most to content, and least endangers morale. Exceptions must at times be made, but the rarer the better for peace. . . . Though not the only factor in deciding merit, experience is the most important factor.” And in various ways young men constantly get their chance. For one thing, no House member has ordinarily been allowed to serve on more than one important committee, while Senatorial service upon more than two has been frowned upon.



For another consideration, changes in Congress are frequent, and a member who drops out for even one term loses all his accumulated seniority.

The expertness of the standing committees of Congress has, as we have said, slowly but steadily increased; and so has their disinterestedness and objectivity. Always rich in legal ability, Congress has come to value economic and engineering talent in proportion as the problem of modern society demand them. It is usually ready to give appropriate committee assignments to an agricultural expert like Senator Clinton Anderson of New Mexico, a labour expert like Representative Mary T. Norton of New Jersey, or a highly experienced manufacturer like Senator Ralph Flanders of Vermont. Observers have noted that committees have become more ready to let outside experts guide their work. "The most conspicuous instance of this", writes Roland Young, "is Senator Robert Wagner's sponsorship of the National Labour Relations Act. The bill was considered by the Committee on Education and Labour, and though Senator Wagner was not a member of the committee, he attended the hearings, questioned witnesses, and sponsored the measure on the floor . . . This is a splendid example of the willingness of a committee to accommodate itself to actual legislative needs." Senator Wagner, as it happened, was the man best fitted to direct work on the bill.

Each committee has its own office, and each its allowances for secretaries, stationery, travel, and other needs. The facilities furnished in books, papers, and expert counsel have grown strikingly with the years. High executive officers, including Cabinet members and bureau heads, have become increasingly ready to appear in person and answer questions, or to supply written statements. While Congress sits the press is seldom without some daily news story of executive testimony at this or that committee hearing. Supporters or opponents of proposed measures are constantly being invited to stage a debate before a committee or sub-committee. Party lines are by no means always strictly regarded in committee proceedings. It is true that the sub-committees, in which much of

the initial work is done, are exclusively or heavily composed of majority-party members. It is also true that when a measure of strictly party character, like much of the New Deal legislation, is in hand, the majority members will allow the minority men only a courtesy vote—if even that. But a great deal of legislation is non-partisan or bi-partisan, while party labels often mean little. The Franklin D. Roosevelt Administration would trust a Republican like Senator Styles Bridges or Joseph H. Ball a great deal more than a Democrat like Burton K. Wheeler; and its Senatorial spokesmen reflected this view.

The evils and drawbacks of the committee system have aroused much criticism. An incompetent, prejudiced, or lazy committee can do endless harm. If it will not report out a good bill favourably, the measure has little chance of passage. Senators can get a bill out of an obstructive committee only by unanimous consent, and House members can get it out only by obtaining the signatures of a majority of Representatives. If a careless committee reports a badly drawn or vicious bill, it may pass Congress simply by virtue of the committee recommendation, for the pressure of business is so great that measures are often carried without careful scrutiny or attempt at amendment. Especially in the House, committees have tended to break responsibility into too many segments, and to impede leadership. Then, too, the secrecy in which committee proceedings are normally conducted has objectionable features. Most of the real work of Congress (and especially the House) being done in committee rooms, and floor debate counting for little, the public has little chance of finding out what is really going forward until it is completed. The large number of committees, too, has made for duplication or conflict.

It was in an effort to abate these evils and to heighten the efficiency of the standing-committee system that the 79th Congress passed the LaFollette-Monroney Act and the 80th put it into effect. The number of committees, almost a hundred, was cut down by nearly three-fifths. To the forty remaining committees were given broader fields of activity,

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run the Legislative Reorganization il fruit. To date its results have been because of the tendency of some its intent. The reorganization left Representatives who under the old a chairmen looking for an outlet for ed to head something! More special than of old were appointed. Then, es began to split into more sub- . Some House committees presently nmittees, so that members who had m one committee meeting to another committee to another. It was found ors, instead of appointing capable -a-year assistants, simply promoted retaries to that post; while a number ns, a brother, even in one instance s have still cropped up in Congress at deal of this evasion, however, is before long the reorganization will

ommittees, reducing their number, ore publicity can be given the work mmittees, and if freer rules of debate se, the general nature of the system All this will take time and effort. al rise in the level of Congressional ability—for such a rise has taken e, continue—must mean greater ency in the committees.

CONDUCT OF AMERICAN FOREIGN POLICY<sup>1</sup>

by HANS J. MORGENTHAU

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FOREIGN politics", says de Tocqueville with special reference to the United States, "demand scarcely any of those qualities which are peculiar to a democracy; they require, on the contrary, the perfect use of almost all those in which it is deficient . . . a democracy can only with great difficulties regulate the details of an important undertaking, persevere in a fixed design, and work out its execution in spite of serious obstacles. It cannot combine its measures with secrecy or await their consequences with patience." The history of foreign policy conducted under democratic conditions, from Washington to Roosevelt, from Castlereagh to Churchill, from Guizot to Barthou, from Bismarck to Stresemann, illustrates the truth of these observations. The conditions under which popular support can be obtained for a foreign policy are not necessarily identical with the conditions under which a foreign policy can be successfully pursued. Whenever these two sets of conditions diverge, those responsible for the conduct of foreign affairs are confronted with a tragic choice. Either they must sacrifice what they consider good policy upon the altar of public opinion, or they must by devious means gain popular support for policies whose true nature is concealed from the public.

Countries with a long experience in the conduct of foreign affairs and a vivid awareness of its vital importance, such as Great Britain, have developed constitutional devices and political practices which tend to minimize the dangers to the vital interests of the nation, inherent in the democratic conduct of foreign affairs. Parliamentary democracy, especially under the conditions of the two-party system,

<sup>1</sup> In the preparation of this paper the author has had the assistance of Mrs. Virginia McClam of the University of California at Berkeley.

provides in the parliamentary responsibility of the Cabinet a mechanism which ensures the support, by the majority of the elected representatives of the people, of the foreign policies pursued. The collective responsibility of the Cabinet for the policies pursued compels the government to speak in foreign affairs with one voice, so that there can be no doubt, either at home or abroad, what the government's foreign policy is at a particular moment.

It is the peculiar quality of the conduct of foreign affairs in the United States that it maximizes the weaknesses inherent in the formulation and execution of foreign policies under democratic conditions and that it aggravates these inherent weaknesses by some unique constitutional devices and political practices.

On the constitutional level, the way in which foreign policy is conducted in the United States is determined by four general characteristics of the American Constitution: (1) its indefiniteness in assigning functions to the different agencies of the Government; (2) the separation of powers which allows the executive and legislative branches of the Government to hold office, and within certain limits to pursue policies, without regard to the other; (3) the system of checks and balances which within certain limits makes it possible for one branch of the Government to prevent another branch from pursuing its policies; (4) the requirement that under certain conditions measures can be taken by neither branch alone, but only through the concerted action of both. The Constitution nowhere makes clear with whom the ultimate responsibility for the conduct of foreign affairs rests. It assigns to the President alone certain specific functions, such as the reception of foreign diplomatic representatives; it assigns others, such as the regulation of foreign commerce and the declaration of war, to Congress alone; it provides for still others, such as the conclusion of treaties, which the President can discharge only in co-operation with the Senate. Apart from making these specific grants, the Constitution limits itself to an over-all distribution of powers between the President and Congress by vesting in the former the executive power and making him

Commander-in-Chief of the armed forces and by vesting all legislative powers and the power of appropriations in Congress.

To locate, with the guidance of these "great generalities" and specific instances, the seat of power in the conduct of foreign affairs remains a task for constitutional theory and political practice to perform. Jefferson's dictum that "The transaction of business with foreign nations is executive altogether" has claimed that seat for the President. On the other side of the argument, there is a chorus of voices which claim for the Senate, if not for both Houses of Congress, at least an equal share in the conduct of foreign policy. Constitutional theologians have covered these two positions with clusters of legalistic cobwebs—and have left the issue where the Constitution has left it: undecided. For in view of the affirmative powers granted by the Constitution to the President and Congress, the issue cannot be decided through constitutional interpretation. By giving some powers to the President, some to the Senate, some to Congress, and by remaining silent on the ultimate responsibility for the conduct of foreign policy, the Constitution, in the words of Professor Corwin, an eminent expounder of its law, "is an invitation to struggle for the privilege of directing American foreign policy." Just as the question of the location of sovereignty in the United States, an issue similarly held in abeyance by the Constitution, had to be answered once and for all by a civil war, so the issue of the ultimate responsibility for the conduct of American foreign policy is being decided, on each individual occasion as it arises, in a series of running battles between the Senate or the two Houses of Congress on one side and the executive branch on the other. Each side uses the weapons which the Constitution provides as well as the extra-constitutional ones which have grown in the shadow of the Constitution.

The political relations between the President and Congress are determined by the fact that the President can hardly ever be certain of having his policies supported by a majority of both Houses of Congress. This is obviously so when the President and the majority of Congress belong to different parties. Yet even if the President is a member of the majority

party, a minority of his own party will regularly vote against the policies with which he is identified. It is true that this defection is somewhat offset by the fact that generally a minority of the opposition party will vote in favour of the President's policies. Yet the traditional jealousy with which any Congress guards its prerogatives against any President will generally give the edge to the hostile minority of the President's party. Thus the President operates under the perpetual threat that his policies will be disavowed by a bipartisan majority of Congress.

To make such a threat come true Congress has three weapons at its command: legislation, appropriations, resolutions. To the same end the Senate alone can avail itself of its power of treaties and over the appointment of diplomatic representatives and the high officials of the executive branch.<sup>1</sup>

The weapon of legislation can be used in two different ways. Whenever a foreign policy, in order to be effective, needs to be implemented by legislation, Congress has the opportunity of modifying, emasculating, or negating the foreign policy pursued by the executive branch. This situation is illustrated by the share which Congress has taken in directing the international economic policies of the United States. The silver policy of the United States can be regarded as the result of Congressional preferences; certain weaknesses of American trade policies must be accounted for by weakening clauses which Congress has inserted in the successive Reciprocal Trade Agreements Acts. Congress can also take the initiative and, as in the case of the neutrality legislation of the thirties and the successive immigration acts, limit the Executive's freedom of action through restrictive statutory provisions.

The weapon of appropriations, too, can be wielded in two different ways. Congress can either withhold in part or in

<sup>1</sup> This power of the Senate over appointments, by virtue of Article II, Section 2, of the Constitution, is in the field of foreign affairs a potential threat rather than an active weapon. The Senate has from time to time refused to confirm individuals nominated by the President to ambassadorial positions or high positions in the State Department; thus far it has not used that power for the purpose of making it impossible for the President to pursue a certain foreign policy.

whole appropriations necessary to the execution of a certain policy and thus cripple that policy or make its execution altogether impossible. The Congressional changes in the appropriations for aid to Western Europe, for the military aid programme, and the Voice of America, illustrate the potentialities of this weapon, which by virtue of the character of present American foreign policy is the most potent of all the weapons at the disposal of Congress. Or Congress can attach a rider to an appropriation bill, providing expenditures for purposes not contemplated by the executive branch. In that case, the President must either reject the appropriation *in toto* and give up the policy for which the appropriation was to be used, or he must accept the appropriation *in toto* and against his better judgment execute a policy imposed upon him by Congress. Thus Congress in 1948 earmarked in the bill providing for aid to Western Europe an appropriation for aid to China, a rider which the President had to accept since he did not want to jeopardize the European Recovery Programme.

Through resolutions, either joint or by one or the other House, Congress expresses its preference for certain policies, either before or after they have been inaugurated. While such expression of preference has no legally binding effect upon the executive branch, it indicates what kind of foreign policies Congress is likely to approve when it is called upon to act on them by way of legislation or appropriation. The Vandenberg Resolution of 11th June, 1948, for instance, calling for the conclusion of regional compacts for the purpose of mutual defence has influenced the form in which the North Atlantic Treaty was submitted to the Senate.

Public opinion has, however, come to regard the constitutional provision which requires the approval of two-thirds of the Senate for treaties negotiated by the President as the main weapon by which one-third of the members of the Senate plus one can veto the foreign policies of the executive branch in so far as they have taken the form of international treaties. In view of the relations between majority and minority party mentioned above and given a politically



controversial issue calling for a partisan stand, the chances of a treaty to be approved by two-thirds of the Senate are virtually nil. "A treaty entering the Senate", wrote Secretary of State Hay summing up his bitter experience, "is like a bull going into the arena. No one can say just how and when the final blow will fall. But one thing is certain—it will never leave the arena alive." The death-blows which the Senate dealt in the inter-war years to Presidential policies of international co-operation are remembered, for whatever different reasons, by President and Senate. As shall be shown in the course of this paper, their memory has exerted a powerful influence toward avoiding conflict situations and securing in advance bipartisan support for the foreign policies to be pursued by the executive branch.

The general power of Congress in the field of foreign affairs has been met by the President with the general weapon which his position as Chief Executive and Commander-in-Chief puts at his disposal, as the special power of a minority of the Senate over treaties has been parried with the instrumentality of the executive agreement.

The President as Chief Executive and Commander-in-Chief has a natural eminence in the conduct of foreign affairs from which constitutional arrangements and political practices can detract, but which they cannot obliterate. His powers in this field are, in the words of the Supreme Court, "delicate, plenary, and exclusive". Short of the expenditure of money, the binding conclusion of treaties, and the declaration of war, the President can well nigh do as he pleases in formulating and executing foreign policies. He can without reference to any other agency of government make a public declaration of policy, such as the Monroe or Truman Doctrines. He can refuse to recognize a foreign government or can recognize it, as succeeding Presidents did with respect to the government of the Soviet Union. He can give advice, make promises, enter into informal commitments as he sees fit. He can send the armed forces of the United States anywhere in the world and can commit them to hostile acts short of war. In sum, he can narrow the freedom of choice which

constitutionally lies with Congress to such an extent as to eliminate it practically altogether. If, for instance, the President had wanted to reply with armed force to the Panay incident of 1937 or the Berlin crisis of 1948, he could have done so on his own responsibility and could thus have committed Congress to a declaration of war regardless of the latter's preferences with regard to the initial policy which would have made war inevitable. The course of American policy toward Germany and Japan during the initial phase of the second world war was determined primarily by Presidential action, and it was left to Congress to ratify or, at worst, to retard and weaken the consummation of that course.

The favourite method through which the President has been able to an ever increasing extent to circumvent the participation of the Senate in the conduct of foreign affairs is the substitution of executive agreements, not requiring legislative approval, for formal treaties. The ascendancy of the executive agreement over the formal treaty has in recent years become such that the former is to-day the normal medium for international compacts. Most of the great political understandings of the war years, from the destroyer deal to Potsdam, were concluded by the President alone in the form of executive agreements. In 1939, ten treaties were concluded by the United States as over against twenty-six executive agreements. The corresponding figures for the following years are eloquent: 1940: 12—20, 1941: 15—39, 1942: 6—52, 1943: 4—71, 1944: 1—74, 1945: 6—54.

The relations between President and Congress, however, cannot be conceived only in terms of conflict, actual or potential. They must also be considered in terms of co-operation. For while the power of the President is pre-eminent in starting the course of American foreign policy, Congress's potential for obstruction remains and the dependence of the Executive upon Congressional consent has increased with the expanding financial requirements of American foreign policy. Thus President Roosevelt and Secretary of State Hull and their successors have developed a system of co-operation with Congress in the formulation and execution of

foreign policy. Its main purpose is the avoidance of the situation, which was the undoing of Wilson, in which the minority party opposes Presidential policies primarily because they are the President's and his party's policies. Three instruments serve the purposes of this "bipartisan foreign policy": consultation on the formulation of policy, participation in its execution, and information about its operation.

It has become the established practice of the executive branch to consult with the foreign policy experts of the two parties, especially those of the Senate, in advance of major steps to be taken, to secure their consent and to take their advice into account. This practice has worked with different results in different fields of American foreign policy. Republican leaders have been anxious to point out that the bipartisan foreign policy stops at the frontiers of Asia. The over-all result, however, has been the formation of a coalition, composed of the majority of the two parties, in support of the President's foreign policy.

The identification of the leaders of Congressional opinion with Presidential policies is further strengthened by their regular appointment to positions of responsibility at international conferences; for instance, former Republican Senator Austin is the principal American representative to the United Nations, and Republican Senators Dulles and Vandenberg and the Democratic Chairman of the Senate Foreign Affairs Committee Connally have been members of the American delegations to most political conferences of recent years.

Finally, the State Department maintains a branch under an Assistant Secretary of State for the exclusive purpose of keeping Congress informed on foreign affairs and to win support for executive policies among its members. The time which policy-making members of the executive branch must spend before Congressional committees, explaining policies, answering questions, and sometimes submitting patiently to abuse, however, by far exceeds the time required for the legitimate purposes of information. Recently, for instance, Mr. Hoffman, the administrator of the Economic Co-operation Administration, and his principal aids had for months

to use the better part of their working time to giving identical testimony to four different Congressional committees.

Here is the point where the bi-partisan policy of co-operation between Executive and Congress reverts back to the traditional pattern of conflict and competition. The insistence by Congress upon the full use of its inquisitorial powers, especially on the part of its least responsible members, is the more jealous and bitter as the pre-eminence of the Executive in foreign affairs is unassailable and Congressional frustration must find the semblance of relief in harassment and delay. Here is to-day the crux in the relations between the executive branch and Congress as concerns the conduct of foreign affairs. It can safely be said that, in a period of international relations dominated by the psychology and technique of the "cold war", the executive branch of the Government of the United States must make a greater effort to maintain friendly relations with the U.S. Congress than with the Soviet Union. The constitutional separation of powers and the political practices growing from it, together with the stalemate in Russo-American diplomatic relations, have brought about the paradox that the traditional diplomatic techniques of persuasion, pressure, and bargaining are applied by the executive branch of the American Government in its relations with Congress rather than with foreign powers.

Thus far we have referred to the President and the executive branch in their relations with Congress and foreign powers as though for purposes of foreign policy the President and the executive branch were one single entity pursuing one single policy. Nothing could be farther from the truth. It is, of course, true that the President as Chief Executive and Commander-in-Chief has the constitutional power to impose his own conception of foreign affairs upon the executive and military departments, with the exception, perhaps, of the independent regulatory commissions. In reality, however, even so strong and astute a President as Franklin D. Roosevelt was unable to assume full control even of the State Department, the constitutional executor of his foreign policies.

The reason for this anomaly must be sought in two factors. One is the absence of a Cabinet which on the highest policy-making level could integrate the policies of the different executive departments in the field of foreign affairs (the American Cabinet being an informal advisory body). The other factor is the frequent inability of the President, without risking inopportune conflicts with Congress, to resolve major dissensions between executive departments definitely or to meet head-on resistance to his policies on the part of an executive department. For Congress, ever jealous of the powers of the executive branch, is ever ready to take advantage of open dissensions within that branch. President Roosevelt, therefore, rather than taking on a reluctant State Department, entrusted the execution of his more delicate and controversial foreign policies to special representatives, operating directly from the White House, or created special agencies for the performance of special functions. Sometimes Roosevelt pursued foreign policies of his own without even the knowledge of the State Department. The classic example is Roosevelt's approval in June, 1944, of the division of the Balkans into British and Russian spheres of influence, while for almost three weeks afterwards the State Department continued to pursue a policy of opposition to the Anglo-Russian Agreement. Sometimes, as with regard to certain phases of Middle Eastern policy and Chief Justice Vinson's abortive mission to Moscow in 1948, the State Department emerges victorious from the struggle with the President.

The problem of unity of action arises not only between the President and the executive departments, but primarily and especially when strong leadership from the White House is lacking, among the executive departments themselves and even within them. Washington is the scene of continuous inter-office feuds, sometimes growing from real differences of policy, more often the result of a mere struggle for power. The Hoover Commission on Organization of the Executive Branch of the Government has counted about forty-five executive agencies, aside from the State Department, which are concerned with one or the other phase of foreign policy.

While most of them deal only with minor matters, some have exerted an important, and at times decisive, influence upon the conduct of American foreign policy. Among them the military establishment is outstanding. The main vehicle for its influence is the National Security Council, composed of the President, the Vice-President, the Secretaries of State and Defence, and the Chairman of the National Securities Resources Board. Its purpose is "to advise the President" in those fields of policy "relating to the national security". In a period of "cold war" the whole field of foreign policy becomes necessarily the proper object of the Council's advice. Among the more than thirty interdepartmental committees and boards which try to co-ordinate the often divergent views and policies of the executive departments as they concern foreign policy, the National Security Council is to-day the key agency through which the views of the executive departments are filtered. Through the daily reports of its executive secretary it exerts a most potent influence upon the President's mind.

The task of co-ordinating American foreign policy under the President's direction does not end with the settlement of disputes between executive departments. It extends to the executive departments themselves and their representation abroad.<sup>1</sup> The perennial example of an executive department divided against itself is the State Department. Having undergone in the last decade a five-fold increase in its staff and having been subject in recent years to almost continuous

<sup>1</sup> How urgent that task still is with regard to the Armed Services, in spite of their unification and the centralization of their political functions in the National Security Council, was demonstrated as recently as September, 1949, by an independent excursion of the Navy into the field of foreign policy. The official policy of the United States toward Franco Spain has been one of cool reserve in diplomatic and economic relations. Yet the Secretary of the Navy saw fit to send a squadron of warships on an official visit to Spain, the first since the Civil War. The embarrassed State Department was at pains to emphasize the non-political character of the visit and the American Embassy in Madrid took care to keep demonstratively aloof from the social functions and ceremonies through which the Spanish Government tried to underline the political significance of the visit. Yet the very fact of the visit and the attitude of the Navy personnel under a high ranking Admiral tended to support the Spanish interpretation of the event's significance.

reorganization, it had been unable to overcome the cleavage between the foreign service, that is, the diplomats proper, and the home office, between the geographical and functional units, and between the old-line officials and the members of the newer branches, such as information and research. Furthermore, certain ambassadors, such as Dodd in Berlin and Kennedy in London in the thirties and Hayes in Madrid during the second world war, were able for months to pursue foreign policies at variance with the policies of the State Department, if not the President. Generals Clay in Germany and MacArthur in Japan have largely formulated and executed their own policies which the executive departments concerned could do little else but ratify. It goes without saying that this diffusion of responsibility for the conduct of foreign affairs among and within the executive departments is reflected in numerous frictions among representatives of the departments in the field.

In the recent judgment of an experienced observer, President Dickey of Dartmouth College, "our procedures for the democratic review and execution of international engagements are . . . in an unholy mess". This is true of the whole field of foreign policy. That the American way of conducting foreign affairs works at all is due to that most elusive yet all-permeating factor which gives direction and unity to the American political system on all levels: public opinion. The Constitution makes public opinion the arbiter of American policy by calling upon the American voter to pass judgment upon the President and his party every four years, upon all members of the House of Representatives and one-third of the membership of the Senate every other year. The American people live perpetually in a state of pre-election or election campaigns. Presidential and Congressional policies are always fashioned in anticipation of what the voter seems likely to approve. The President in particular, as the most exalted mouthpiece of the national will and the initiator of foreign policies, will test from time to time the state of public opinion by submitting to it new policies in the tentative form of public addresses and messages to Congress.

These new policies will then be openly or surreptitiously pursued or else shelved according to the reaction of public opinion. Democratic control of American foreign policy, then, will depend largely upon the correctness of the estimate which the Executive makes of the willingness of public opinion to support its policies, and upon its ability to marshal public opinion to that support. It is here that another, and perhaps a fundamental, weakness of the conduct of American foreign policy becomes apparent.

The state of American public opinion is ascertained by a special branch of the State Department and by the intuitive estimates of individuals through the media of press, radio, public opinion polls, Congress, and private communications. Thoughtful observers did not need the evidence of a succession of Presidential elections to become aware of the distorted picture which the mass media of public opinion paint of the actual state of the American mind. While they may point with approximate accuracy to its lack of information, they give only a dim inkling of its native intelligence and moral reserves. Yet President and State Department seem to be taking at its face value the discouraging picture which the mouthpieces of public opinion convey of the moral and intellectual qualities of the American people. In particular, the fear of what Congress might do to their policies has become a veritable obsession with many members of the executive departments. This fear derives from a dual misjudgment of the powers of Congress as an organ of public opinion.

That this fear is not justified by the actual control of Congress over the conduct of foreign affairs has already been pointed out. That the temper of Congress and especially of the Senate is not necessarily representative of public opinion is evident from a consideration of the four factors which limit the representative function of Congress: the disproportionate influence of rural over urban representatives by virtue of the apportionment of Congressional districts favouring the former; the disproportionate influence of the less populous states by virtue of the representation of all states, regardless of



population, by two Senators (New York with more than 13 million inhabitants having the same representation in the Senate as Nevada with 110,000 inhabitants); the disproportionate influence upon members of Congress of the spokesmen of special interest groups, of which in foreign affairs the sugar and oil lobbies, the American Legion and certain ethnic and religious minorities have been the most potent; finally, the limited representative character of members of Congress from a number of Southern states by virtue of the limitation of the franchise to a small fraction of the population.

The mistaken identification of press, radio, polls, and Congress with public opinion has had a distorting as well as paralyzing influence upon American foreign policy. It is here that the way American foreign policy is conducted has a direct bearing upon the kind of foreign policy pursued by the United States. By equating what Congress will approve with what the American people might be willing to support, President and State Department underrate the intellectual and moral resources of the American people and are demanding less of the American people than they could obtain. In consequence, the foreign policies which they present to public opinion for approval often stop short of what they deem necessary in the national interest. More particularly, they have thought it wise to resort to shock and overselling tactics in order to persuade public opinion of the need for new departures in foreign policy, such as military support of Greece and Turkey and the Marshall plan. Not only have they in this way made illusory hopes, fear and hysteria the prime movers of popular support: they have also become the prisoners of their own propaganda which limits their freedom of movement.

This fear of public opinion, especially in the form of Congressional opinion, together with the ever present risk of conflict between the Executive and Congress and within the executive branch itself constitutes a very serious handicap for any fresh departure in foreign policy. If one wants to win the next election, if one wants to advance in the bureaucratic hierarchy, if one wants to retain and increase the

powers of one's office, it is well to avoid conflict and to swim with the prevailing current. Yet any fresh departure in foreign policy, especially in a period of "cold war", means conflict—conflict with a half-informed and at times hysterical public opinion, conflict with a suspicious and reluctant Congress, conflict between and within executive departments. Such conditions make of routine and inertia an expedient, if not a virtue. Thus the foreign policy of the "cold war", with its emphasis upon military preparations and its minimization of the traditional methods of diplomacy, is in a sense the foreign policy which the procedures of the American Government are best fitted to conduct. Yet the foreign policy of the "cold war" is not the best fitted to preserve peace. Thus the overriding concern for the preservation of peace makes imperative a change in the methods and, more importantly, in the spirit in which American foreign policy is conducted.

The factors which determine the conduct of American foreign policy co-operate as a brake upon executive initiative in foreign affairs. The evils which de Tocqueville finds in the democratic conduct of foreign affairs are compounded by the peculiarities of the American constitutional and political system. Not only does Congress act as a brake upon the executive branch, as it should, but so does public opinion, which ought to provide the fuel to carry American foreign policy forward. In that task of re-establishing public opinion as an independent positive force the responsibility of the President is paramount.

It is for the President to reassert his historic role as both the initiator of policy and the awakener of public opinion. It is true that only a strong, wise, and shrewd President can marshal to the support of wise policies the strength and wisdom latent in that slumbering giant—American public opinion. Yet while it is true that great men have rarely been elected President of the United States, it is upon that greatness, which is the greatness of its people personified, that the United States, from Washington to Franklin D. Roosevelt, has had to rely in the conduct of its foreign affairs. It is upon that greatness that Western Civilization must rely for its survival.

## THE AMERICAN ELECTORAL SYSTEM: CONSTITUTIONAL & POLITICAL ASPECTS

by CLARENCE A. BERDAHL

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IN the United States there are, strictly speaking, no national voters and no national elections; there are only state voters and state or local elections, although some elections are nation-wide and look like national elections. This situation, sometimes forgotten even by Americans, is due, of course, to the federal system of government which divides governmental power between states and nation, which applies to suffrage and elections as well as to other matters, and which means that the control of these subjects is vested largely in the states. It should be remembered, in this connection, that there are not yet, strictly speaking, any popularly elected national officers in the United States. Members of Congress, whether of the House or Senate, are elected from the various states to represent those states, and are constitutionally considered state officers;<sup>1</sup> and even the President and Vice-President are chosen by Electors who are in turn state officers elected within and for each state. Consequently, there is no occasion for a national election and no need for national voters.

### I. CONTROL OF SUFFRAGE

With respect to voting qualifications, there are only a few prescriptions in the United States Constitution. In the first place, in Article I the qualifications of those who may vote for members of the national House of Representatives are fixed, but not in specific terms; they are required to be the same as "for electors of the most numerous branch of the State legislature", which is merely another way of providing that

<sup>1</sup> This seemed to be the conclusion of Congress itself in refusing to undertake impeachment proceedings against Senator Blount in 1797, and in various election contests decided later.

each state should fix those voting qualifications. When the Senate was finally made popularly elective in 1913 by the Seventeenth Amendment, the above provision was incorporated verbatim into that Amendment, and the principle of state control over the suffrage was re-emphasized and maintained. These provisions also make it clear that there is no distinction whatever in the United States between a national voter and a state voter, and that the voting qualifications for whatever office are prescribed by the various states.

Secondly, the Fourteenth Amendment, adopted in 1868, includes the following provision: "But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein [i.e., in the House of Representatives] shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state." This provision seems at first glance to fix the suffrage qualifications for all elections as (1) male, (2) citizen, and (3) twenty-one years of age; and, while the first requirement may be considered as changed later by the Nineteenth Amendment enfranchising women, the provision has not been repealed or otherwise amended, and is therefore still legally effective.

It should be noted, however, that the Fourteenth Amendment was intended to relate particularly to the negro, just freed as a result of the Civil War and the previously adopted anti-slavery (Thirteenth) Amendment; it conferred citizenship on the negro, and it attempted, by the above statement of qualifications, to secure him the vote as well. The actual enfranchisement of the negro was by this provision left to the states, but state action was to be forced by the penalty of reduced representation in Congress if the voting qualifications were not changed accordingly. If any state chose to accept

the penalty, it might still fix voting qualifications as it pleased. In other words, the Fourteenth Amendment did not itself fix the suffrage qualifications, but merely set up standards which the states were expected to follow but need not.

Actually, as is well known, not a single state enfranchised the negro or otherwise conformed to these standard qualifications, nor has any state suffered the penalty prescribed in case of such failure. The various efforts in Congress to apply the penalty have been unsuccessful because of the threat and certainty of a Southern filibuster; but these efforts have also been half-hearted at the best, for if applied at all the penalty would have to be applied also against Northern states, such as Massachusetts, which have adopted literacy or educational tests for voting, such tests being equally outside the standard qualifications of the Fourteenth Amendment.<sup>1</sup> At any rate, this Amendment has become a dead letter in respect to suffrage, and has not in the least affected the principle that the suffrage is a matter for state regulation and control.

Thirdly, the Fifteenth and Nineteenth Amendments are suffrage amendments, which are generally said to have conferred the franchise on negroes and women respectively. While practically this is true, it should be pointed out that constitutionally these Amendments do not by their own terms *confer* the right to vote upon anyone, but prohibit the states from denying the suffrage to these classes. The distinction is of some importance, for, in the first place, there is again in this language a clear recognition of the general principle of state control over the suffrage, although within certain limitations here prescribed; and, secondly, the limiting language (race, colour, previous condition of servitude, sex—not negroes or women) has made it possible for the states to impose restrictions on the suffrage within the terms of the Amendments (particularly the Fifteenth) and yet effectively prevent the accomplishment of their purposes.

<sup>1</sup> A strict application of the penalty provisions would affect more than half the states, including more than a dozen Northern states. In some Southern states the representation in Congress should probably have been reduced by approximately one third, and in Northern states with the literacy test the reduction should undoubtedly be substantial.

In respect to negro suffrage, for example, the Southern states at an early date provided literacy tests for voting, which in themselves were clearly constitutional since not prohibited by the Fifteenth Amendment. The negroes were largely illiterate and would therefore be excluded by these tests, but there were also large groups of illiterate whites whom these tests, if properly administered, would also exclude from voting. Hence legislation was enacted in these Southern states which exempted from the literacy test any person who himself or whose ancestor could vote before 1867.<sup>1</sup> This "grandfather clause", as such provision came to be called, was an extremely effective device, while it lasted, to prevent negro voting, but it was found by the courts to be so directly aimed at the negro, even though put in the form of a literacy test and its application, as to violate the Fifteenth Amendment and therefore unconstitutional.<sup>2</sup>

Another method of evading the Fifteenth Amendment has been the enactment of the so-called "reasonable understanding" clause. This was again an educational qualification, requiring prospective voters to read, understand, and give a reasonable interpretation of any clause in the state or national constitution, to the satisfaction of the election judges. This test applied to all voters alike, did not in itself discriminate against the negro or come within the limitations of the Fifteenth Amendment, and has not yet been found to be unconstitutional. However, since the election judges were white, it was a regular practice for them to require white voters to read and explain one of the simpler provisions of the state or national constitution, and to be easily satisfied with

<sup>1</sup> This date was before the adoption of the Fourteenth and Fifteenth Amendments, and before any negroes could vote or claim the right to vote under any provisions of law or constitution.

<sup>2</sup> *Guinn v. United States* (1915), 238 U.S. 347; *Myers v. Anderson* (1915), 238 U.S. 368. There is reliable evidence that a considerable number of illiterate whites, who could vote only by claiming their descent from these pre-1867 voters, felt the stigma of being branded as "grandfather voters", refused to take the necessary oath, and did not vote; to some extent, therefore, the grandfather clauses probably were not as completely discriminatory as they were intended, and served to exclude illiterate whites as well as negroes.

the explanation given, but to require negroes to read and explain the "due process" clause of the Fourteenth Amendment itself, or some other provision which even the United States Supreme Court has not been able to explain with assurance or clarity. These "reasonable understanding" clauses have therefore tended to become discriminatory in fact, if not in law, and have become means of asserting the power of the states over suffrage, in spite of the limitations in the Constitution.<sup>1</sup>

A third method of evading the Fifteenth Amendment has been by requiring the payment of taxes, especially the poll tax, as a prerequisite to voting, and requiring even the production of the tax receipts, sometimes for several preceding years.<sup>2</sup> Since the negroes were as a group somewhat more careless than the whites about the payment of taxes and particularly careless about preserving their tax receipts, these provisions, not discriminatory in themselves, tended to operate against the negro. However, not being expressly directed against persons of any particular race, colour, or sex, they do not appear to be within the limitations of the suffrage Amendments and have not yet been held unconstitutional.

<sup>1</sup> The following provisions in the Louisiana Constitution of 1921, still effective, are typical: "He [the voter] shall be of good character and shall understand the duties and obligations of citizenship under a republican form of government. He shall be able to read and write, and shall demonstrate his ability to do so when he applies for registration by making, under oath, administered by the registration officer or his deputy, written application therefor, in the English language, or his mother tongue. . . .

"Said applicant shall also be able to read any clause in this constitution, or the Constitution of the United States, and give a reasonable interpretation thereof.

"If he is not able to read and write, then he shall be entitled to register if he shall be a person of good character and reputation, attached to the principles of the Constitution of the United States and of the state of Louisiana, and shall be able to understand and give a reasonable interpretation of any section of either constitution when read to him by the registrar, and he must be well disposed to the good order and happiness of the state of Louisiana and of the United States and must understand the duties and obligations of citizenship under a republican form of government. . . ."

<sup>2</sup> In one state (Alabama) the poll taxes must have been paid since 1901, in another (Virginia) for three years preceding the election.

The poll tax, although increasingly ineffective as a bar to negro voting as the negro has become better educated in these governmental processes, has somehow become a symbol of racial discrimination in respect to voting. As such, its maintenance has been vigorously condemned, not only by liberals generally, but specifically by the President's Committee on Civil Rights, and by the President himself;<sup>1</sup> and its abandonment as a voting qualification has been demanded by both the Republicans and the Democrats in their national platforms.<sup>2</sup> In Congress there have been strenuous efforts to carry out these pledges, and the House of Representatives has, on five separate occasions beginning with the 77th Congress (1942), passed bills to abolish the poll tax as a voting qualification, the last time on July 26, 1949, by a vote of 273-116. On each previous occasion these bills have failed in the Senate, not because of a hostile majority but because a filibuster has prevented them from coming to a vote, and this will certainly happen again in the present Congress.

The furore over the poll tax may seem surprising and unnecessary, since there are only a few states that still maintain

<sup>1</sup> "Under the Constitution, the right of all properly qualified citizens to vote is beyond question. Yet the exercise of this right is still subject to interference. . . . Requirements for the payment of poll taxes also interfere with the right to vote. There are still seven States which, by their constitutions, place this barrier between their citizens and the ballot box. The American people would welcome volunteer action on the part of these States to remove this barrier. Nevertheless, I believe the Congress should enact measures insuring that the right to vote in elections for Federal officers shall not be contingent upon the payment of taxes." Message of President Truman to Congress, Feb. 2, 1948.

<sup>2</sup> *Republican* (1948): "We favour the abolition of the poll tax as a requisite to voting." *Democratic* (1948): "The Democratic Party is responsible for the great civil rights gains made in recent years in eliminating unfair and illegal discrimination based on race, creed or colour. The Democratic Party commits itself to continuing its efforts to eradicate all racial, religious and economic discrimination. We again state our belief that racial and religious minorities must have the right to live, the right to work, the right to vote, the full and equal protection of the laws, on the basis of equality with all citizens as guaranteed by the Constitution. We highly commend President Harry S. Truman for his courageous stand on the issue of civil rights. We call upon the Congress to support our President in guaranteeing these basic and fundamental American Principles: (1) the right of full and equal political participation; (2) . . ."



this voting qualification, the tax involved is trivial, and even the Southern states seem disposed to abandon this requirement in due time.<sup>1</sup> The attempts at national action have been carefully confined to so-called national (that is, Congressional and Presidential), not state elections, but even so the Southerners might seem to have the better of the constitutional argument, in their insistence on the right of the states to regulate the suffrage within the broad limitations of the national Constitution. In fact, the Republicans, naturally the strongest advocates of national action,<sup>2</sup> practically conceded the argument in 1944, when they advocated in their national platform, not a federal statute abolishing the poll tax, but the submission of a constitutional amendment.

In the 80th Congress, Senator Wayne Morse of Oregon, who undertook the principal constitutional argument on behalf of those who favoured the federal anti-poll tax bill, also conceded the reasonableness of the opposition argument, and made his own case on the argument that poll tax restrictions on the suffrage "did not conform to the historic theory that was in the minds of the founding fathers . . .", an argument that ignored the property, religious, and other qualifications that seriously restricted the suffrage in 1787, qualifications of which the Founding Fathers were well aware and which they

<sup>1</sup> There are seven Southern states that still (1949) maintain the poll tax requirement for voting: Alabama, Arkansas, Mississippi, South Carolina, Tennessee, Texas, Virginia; it seems not so well known that there are also five New England states that still associate the poll tax with voting, although not as a general or absolute requirement: Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

During recent years the poll tax qualification has been abolished in four Southern states: North Carolina, Florida, Louisiana, Georgia; in Tennessee the legislature voted its abolition, but the state supreme court held the measure unconstitutional; in Virginia a constitutional amendment is pending; and in Texas the legislature in 1949 voted to submit the question to a popular referendum. Southern liberals, such as Senator Lister Hill of Alabama, strongly advocate repeal of the poll tax, but insist that it be done by state action.

<sup>2</sup> However, the Republicans vigorously opposed national control in the Federal Soldiers' Voting Law enacted in 1943, arguing interference with the right of the states to control the suffrage; they feared that the Democratic Administration would make soldier voting too easy and that these absentee soldiers would vote heavily Democratic, which happened.

did not challenge when the Constitution was written.

Senator Morse also argued, somewhat more cogently, that the poll tax is not a voting qualification at all within the meaning of the Constitution, "no more a true qualification to determine a prospective voter's inherent ability, understanding, or capacity to exercise the high privilege of citizenship involved in voting than would a requirement that the prospective voter be baldheaded, or stand six feet tall in his stocking feet, or have a net annual income of \$10,000,000. . . . The origin of the poll tax, and the way in which it has operated, shows only too clearly that it is not, and was not intended to be a *bona fide* qualification. Its intended purpose, and its intended result, was to eliminate or greatly restrict a particular element of the citizenry from the use of the free ballot."<sup>1</sup> It is possible to sympathize fully with this point of view, to feel keenly that these poll tax restrictions are relics of a by-gone age, and yet to conclude that the power to deal with the matter is, under the American Constitution, reserved to the states.

Finally, in this review of the constitutional problems involved in the suffrage, mention should be made of the white primary. The United States Constitution takes no express notice whatever of political parties or of *nominations* to public office, but only of *elections*, and hence it was for years the constitutional rule that the political parties and their operations were entirely within the jurisdiction of the states. In the Southern states, where the Democratic Party was dominant, the Democratic nomination was equivalent to election, and consequently in these one-party states the primary became more important than the election. Southerners therefore hit upon the device of the white primary—that is, they provided by statute or by party rule that only white voters might participate in the Democratic primary, thus barring the negro from effective political participation. This method of dis-

<sup>1</sup> The gist of the constitutional argument, including the above argument by Senator Morse, is found in *Congressional Record*, 80th Cong., 2nd Sess., Aug. 3, 1948, pp. 9816-9857. A study of the operation of the poll tax requirements in Texas shows that in that state the requirement was not applied in a discriminatory manner nor was it important as a restriction on the negro.

franchisement spread to all eleven Southern states, and was thought for some time to be fool-proof against constitutional attack, but that proved not to be the case. In a series of decisions over a period of twenty years (1927-1948), the United States Supreme Court first held such white primary laws to be contrary to the Fourteenth Amendment as a denial to the negro of the "equal protection of the laws"; then took the position that nothing could be done about such discrimination if by the political party itself and not by the state, since the Fourteenth Amendment applies only to the states; but finally concluded that the political party is, after all, engaged in a public function in the nomination of public officials, and therefore cannot discriminate against the negro.

The Court has thus "administered the judicial *coup de grâce* to the white primary",<sup>1</sup> and has, by so much, limited the power of the states to regulate the franchise at their own pleasure under all circumstances. Even so, the power of the states to determine the franchise, not only in state and local elections, but even in elections for national purposes, is such that a well-known writer on American government was able to repeat in 1946 what he first stated in 1919: "They (the states) could, if they so desired, provide that no one may vote at a presidential or congressional election [and, of course, at a state election] unless he is able to recite the Declaration of Independence, or sing the high notes in the Star Spangled Banner, or go through the manual of arms."

The result is that voting qualifications are not necessarily uniform throughout the United States, but may vary from state to state. Actually, they do vary to some extent, not only in respect to the special qualifications reviewed above, but also in respect to others. Property qualifications are still required in a half dozen states, although only for special purposes, such as voting on bond issues, and are alternatives to other qualifications, such as literacy, in four additional states. The residence requirements vary from six months in

<sup>1</sup> *Nixon v. Herndon* (1927), 273 U.S. 536; *Nixon v. Condon* (1932), 286 U.S. 73; *Grovey v. Townsend* (1935), 295 U.S. 45; *Smith v. Allwright* (1944), 321 U.S. 649; *Rice v. Elmore* (1948), 333 U.S. 875.

some states to two years in others, with similar variations for local areas. United States citizenship, which until a few years ago was not required in several states, is now a uniform requirement in all the states, but the period of citizenship varies from its mere possession in most states to five years in one state. Even the age of twenty-one, almost universally deemed the appropriate minimum age for voting, was in 1943 reduced to eighteen in the state of Georgia. This lack of uniformity, this succession of difficult and disturbing constitutional problems, this heated debate over the civil and political rights of minorities, are part of the price which American citizens must pay for the federal system of government which they still wish to maintain.

## II. CONTROL OF ELECTIONS

With respect to the conduct and control of elections, there is again a division of power between states and nation fairly clearly specified in the national Constitution. In the first place, elections for state and local office are not mentioned at all in that instrument and are therefore subject exclusively to the control of the several states. The times of election, the offices to be filled, the form of the ballot, the voting procedures, and all the other election details, are for those offices determined completely by each state for itself, and may vary from state to state. In fact, there is a great deal of variation:<sup>1</sup> although most states hold their general state elections on the same day in November in even-numbered years (which day has therefore come to be known in the United States as the General Election Day), two states hold theirs in other months (Louisiana in April, Maine in September), and three in odd-numbered years (Kentucky, Mississippi, Virginia); the primary elections drag on in the different states from April

<sup>1</sup> In Illinois, for example, the election calendar shows five separate elections: (1) on the first Tuesday after the first Monday in November (the General Election Day)—Presidential, Congressional, state, and county offices; (2) first Tuesday in April—certain city, village and township offices; (3) second Saturday in April—school offices; (4) third Tuesday in April—other city and village offices; (5) first Monday in June—judicial offices. At least three primary elections must also be held to nominate candidates for these elections.

to October in election years; in spite of the General Election Day, most states hold separate elections for some local and special purposes, but the time and number of these several elections vary considerably; in about twenty-five states a single ballot is provided at the general election, which is so large and inclusive as to be called a blanket ballot,<sup>1</sup> while in other states separate ballots are used. (up to eight in Vermont) for constitutional amendments and other propositions, for judicial offices, for local offices, for Presidential Electors, and so on; there are other variations too numerous to mention in this paper. The system is so involved that adequate description becomes almost impossible without a detailed examination of its operation within each state.

Secondly, the "times, places, and manner" of holding Congressional elections were made subject (by Article I, section 4) to regulation within each state by the state legislature, but with the provision that "the Congress may at any time by law make or alter such regulations".<sup>2</sup> Until 1842 the Congressional elections were left entirely to the states, with the result that the method of choosing members of Congress was not uniform throughout the United States, but in that year Congress enacted a statute requiring that Representatives be uniformly chosen by single-member districts, a system that has been maintained ever since. It should be noted, however, that this district system cannot be made effective without supplementary state action, since the district lines must actually be determined by the respective state legislatures. Occasionally these legislatures have failed to carry out their part, a notable example being in Illinois, where for nearly forty years (1911-1947) the legislature refused to re-district the state

<sup>1</sup> In Indiana in 1932, this meant a ballot more than 2,000 square inches in size, including 319 names for 54 offices, and two propositions, while in Pennsylvania in that year the ballot contained 44 names for 11 offices. The Chicago primary ballot in 1934 was described as one which would "qualify as a bed sheet in Texas, where hotels are required by law to provide such covering in ample size."

<sup>2</sup> Originally an exception to this Congressional power was made "as to the places of choosing Senators", which related to the election of Senators by the state legislatures but which became obsolete with the change to popular election in 1913.

according to the Congressional Reapportionment Acts, and the resulting inequalities of representation in that state became almost a scandal until finally corrected.

In 1871 Congress provided for federal supervision of Congressional elections, a measure intended particularly to protect the newly-enfranchised negro from interference by the Southern states, but this measure has seldom been used;<sup>1</sup> and in the same year Congress also required the use of paper ballots in such Congressional elections, later (1899) authorizing also the use of voting machines. In 1872, the time of these elections was fixed for the first Tuesday after the first Monday in November in even-numbered years, which uniform day required for Congressional elections persuaded virtually all the states to fix their state elections on the same day in order to save inconvenience and expense—and thus was established our so-called General Election Day.<sup>2</sup> These acts were all applied to United States Senators following the change to popular election in 1913.

The power of Congress to regulate Congressional elections in the above manner is clear, has not been seriously challenged, and has generally been exercised with due regard for the rights of the states. There has been serious challenge, however, and a good deal of difficulty, as new problems have arisen whose sensible solution seemed to require national action. Confronted with the problem of discrimination in respect to the franchise, President Truman, in his message recommending federal action against the poll tax, expressly disclaimed any intention to have further federal regulation of elections. "I wish to make it clear", he said, "that the enactment of the measures I have recommended will in no sense result in Federal conduct of elections. They are designed to give

<sup>1</sup> This was the third in a series of so-called Force Acts, enacted by Congress to enforce the results of the Civil War and Reconstruction in the South; the first two were declared unconstitutional.

<sup>2</sup> Maine continues, as the single exception, to elect members of Congress in September in connection with its state elections, under a special provision enacted by Congress in 1875. It is this September election that makes Maine a kind of political barometer, particularly in Presidential years; all states, including Maine, must hold Presidential elections in November, that being required by Congress since 1845.

qualified citizens Federal protection of their right to vote. The actual conduct of elections, as always, will remain the responsibility of State governments." The anti-poll tax bills could, however, be constitutionally justified only if they regulated the "manner" of an election, and not if they determined suffrage qualifications. The bills were, therefore, ingeniously written to make them fit the area of Congressional power, if not their real purpose.<sup>1</sup> This is a device frequently used in other fields of governmental activity, is probably necessary in a system with a Constitution otherwise too rigid for adaptation to modern situations, and in this instance fully supported by weighty opinion.<sup>2</sup> The question of what is an appropriate election regulation, within the meaning of the Constitution, has become, on the whole, as much a political as a constitutional problem, and is likely to be settled on a political basis.

Another persistent problem not formally recognized by the Constitution is that of the political party and its operations. The close relation of nomination to election was long since understood by the state courts, and the states had relatively little difficulty in regulating party methods as a part of the election process. The result was a mass of legislation dealing with the organization of the political party, the methods of nomination, and the financing of political campaigns. The lack of uniformity in this legislation and its incomplete

<sup>1</sup> Partial text of anti-Poll Tax Bill passed by House of Representatives in 1947:

*"Be it enacted, etc.,* That the requirement that a poll tax be paid as a prerequisite to voting or registering to vote at primaries or other elections for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, is not and shall not be deemed a qualification of voters or electors voting or registering to vote at primaries or other elections for said officers, within the meaning of the Constitution, but is and shall be deemed an interference with the manner of holding primaries and other elections for said national officers and a tax upon the right or privilege of voting for said national officers. . ."

<sup>2</sup> The passage by five successive Houses of an anti-poll tax bill is impressive argument with respect to constitutionality; the Senate Committee on the Judiciary has on each occasion recommended passage after careful examination of the constitutional argument; and the Attorney General on the last occasion gave a formal opinion that the bill was constitutional.

character in many states, made national legislation seem imperative, and Congress, in 1907 and 1910, enacted statutes regulating the sources and amounts of money that might be spent in Congressional campaigns. These regulations applied expressly to elections, and were therefore accepted as within the power of Congress to regulate the "manner" of such Congressional elections; but in 1911 Congress extended these regulations to party primaries or to campaigns for nomination as well, and in so doing went beyond the letter of the Constitution. The United States Supreme Court, approximately fifty years behind the state courts in its views, held in 1921 that a primary is not an election, and that therefore the power of Congress to regulate elections could not be extended to cover nominations; but twenty years later the Supreme Court reversed itself and now held that primaries or nominations are a part of the election process.<sup>1</sup> Meanwhile Congress had conformed to the Newberry decision of 1921 by enacting in 1925 the Federal Corrupt Practices Act, which again carefully confined its regulations to election campaigns only; and the Congressional primaries are as yet unregulated by national statute.

Finally, there are the Presidential elections, which, although involving genuinely national officers, are even less under the control of the national government than are Congressional elections. This grows out of the fact that a "Presidential election", as that term is used in the United States, is not constitutionally an election of President and Vice President at all, but only of Presidential Electors. These Electors are apportioned among the different states according to the representation in Congress and are chosen within each state, "in such manner as the legislature thereof may direct". A Presidential election is therefore actually a series of state elections, all held on the same day, and subject to regulation by each state. Congress is given power only to "determine the time of choosing the Electors, and the day on which they shall give their votes"; and accordingly Congress has

<sup>1</sup> *Newberry v. United States* (1921), 256 U.S. 232; *United States v. Classic* (1941), 313 U.S. 299.



from time to time fixed various convenient dates for these procedures,<sup>1</sup> with the result that the election of President Truman was not constitutionally certain until January 6, 1949, although everybody considered him elected, and rightly so, on the evening of November 2, 1948.

In other words, only the formal operations of the Electoral College<sup>2</sup> are subject to regulation by Congress, while the substantial and realistic features of Presidential selection are under state control. The power of the respective state legislatures to determine the method of choosing the Presidential Electors, and thereby to determine the actual method of Presidential selection, is without any exceptions or reservations and so complete that any legislature might, it has been aptly said, "vest the appointment of Electors in a board of bank directors, a turnpike corporation, or a synagogue". In fact, the state legislatures, quickly sensing the general desire for more popular participation in this process than was intended by the Founding Fathers, exercised their power in such a way as to make the Presidency increasingly subject to popular control.

This was done, first, by providing for popular election of the Electors, a method which has been uniform in all the states since 1864. Secondly, the nomination of Electors by the various political parties was encouraged and subjected to statutory regulation, and in such a way as virtually to require the winning Electors to vote for the Presidential nominees of their party. Thirdly, the ballot has been ingeniously devised in the different states to enable the voter in some way to vote directly for President and Vice-President, and to have his vote count constitutionally as a vote for the appropriate Presidential Electors.<sup>3</sup> In other words, it has

<sup>1</sup>The present requirements are as follows: (1) *election of Electors*—first Tuesday after the first Monday in November, the General Election Day (since 1845); (2) *voting by Electors*—first Monday after the second Wednesday in December (since 1934); (3) *counting of vote and declaration of result by Congress*—January 6 (since 1934).

<sup>2</sup> This is the term regularly used, even in the statutes, for the entire group of Electors, but actually these Electors meet only in their respective states, and hence a more accurate term would be "Electoral Colleges".

<sup>3</sup> See S. D. Albright, *The American Ballot* (1942), esp. ch. 5.

been possible by such state legislation, varying in detail but all to the same general purpose, to retain the indirect, unpopular system of the Electoral College provided in the national Constitution, and yet make that system over into one which is virtually popular and direct. Nothing better illustrates the American genius for institutional development within the limits of a rigid Constitution difficult to change.

There are still some important limitations in respect to this democratization of Presidential selection. The election of the Electors as a group within each state, instead of by districts, results in an electoral vote for the various candidates generally out of proportion to the popular vote, and sometimes even in the election of "minority Presidents", that is, Presidents who have won a constitutional majority in the Electoral College but less than a majority of the popular vote.<sup>1</sup> This can be changed by state legislation, but the "at large" system appears to be fixed by tradition and likely to continue unless corrected by constitutional amendment.<sup>2</sup>

The most important limitation, however, relates to the method of Presidential nomination. The present National Convention system has grown up outside of the law, is uncontrolled by national statute, and probably cannot be so controlled. Various states have established the so-called Presidential primary, under which delegates pledged to particular Presidential candidates are chosen by the party rank and file for the respective party Conventions, and in some cases the party voters may even express their preferences directly for Presidential nominees. Some progress toward democratization and popular control of the final nominating process has been made by this device, but its usefulness

<sup>1</sup> Woodrow Wilson in 1912 won 82% of the Electors but only 42% of the popular vote; and President Truman was re-elected in 1948 with about 57% of the electoral vote but only about 49% of the popular vote. The winning President in 1876 (Hayes) and 1888 (Harrison) did not even have the highest popular vote. For table of such minority Presidents, see J. M. Mathews & C. A. Berdahl, *Documents and Readings in American Government* (rev. ed., 1940), pp. 225-226.

<sup>2</sup> The constitutional amendment now under serious consideration in Congress would, if adopted, abolish the Electoral College and give to each state an electoral vote in exact proportion to the popular vote.

is impaired by the fact that it is a state primary, is at present in effect in less than half the states (seventeen in 1948), varies in important detail in those states that have it, and may have only slight influence on the Convention.<sup>1</sup> A national Presidential primary was recommended by President Wilson in 1913, and various proposals for such a national primary, whether by statute or by constitutional amendment, have been made during these years, but nothing has come of them. A national statute would almost certainly be constitutionally impossible, and a constitutional amendment appears practically improbable. For some time to come the control of this matter seems likely to remain in the states, and the complete democratization of Presidential selection must await the impetus that comes only gradually with the years.<sup>2</sup>

There are numerous problems relating to suffrage and elections in the United States that cannot be examined in this paper, but it should be sufficiently clear that the system is extremely complex, and perhaps unnecessarily so. Much of the complexity is due to the federal system of government, with the uncertainties and clashes of jurisdiction that make more than ordinarily difficult an appropriate adaptation to modern situations. Some of the complexity is also due, however, to the strong feeling for popular election as a form of democracy, so that the elective offices have become so numerous, elections so frequent, and the ballot so lengthy as to make the task of the voter an almost impossible one. Americans often envy the British voter, with few elections, few offices to fill, few candidates from whom to choose, and no constitutional problems whatever!

<sup>1</sup> The best analysis of these problems, although out of date in respect to details, is Louise Overacker, *The Presidential Primary* (1926).

<sup>2</sup> A somewhat detailed analysis of the trend towards democratization has been made by the present writer, in a recent article, "Presidential Selection and Democratic Government", *Journal of Politics*, vol. 11, pp. 14-41 (Feb. 1949).

## AN AMERICAN ELECTION CAMPAIGN

by ESTES KEFAUVER

*(Senator from Tennessee; Member of the Committee on Armed Services)*

THE Presidential campaign in the United States, coming at quadrennial intervals and bringing into play all the elements of party organization and strategy, may be taken as typical of an American election campaign.

Before the campaign begins, several preliminary steps have been taken. First, both major political parties have activated their machinery, which consists of a hierarchy of precinct, county, state, and national committees. This hierarchy is shaped like a pyramid with the national committee at the apex and the mass of party members, grouped in local precincts, at the base. Primary laws in the several states define party, prescribe the conditions of membership, and describe the composition, selection, and functions of state and local committees. But the parties are not subject to federal regulation.

Second, both parties have held a national convention late in June of the Presidential year, at which they have elected a national committee, adopted a platform, and selected their candidates for President and Vice-President. The national committee consists of a man and a woman from each of the states, territories, and insular possessions. The chairman of the national committee is chosen by the party's Presidential candidate, manages his campaign, and directs the activities of the entire party organization. The party platform is a long document which surveys the whole field of national politics, sets forth party policy in general terms on many public questions, and seeks to harmonize group and sectional interests. Contest for the Presidential nomination is often bitter and many ballots may be taken before the winner emerges with a majority of the delegates' votes. John W. Davis won the Democratic nomination in

1924 on the 102nd ballot; Thomas E. Dewey received the Republican nomination in 1948 on the third ballot.

During July and the first half of August the parties perfect their organization, commence the collection of funds, lay down the main lines of party strategy, and set up their headquarters: the Republicans usually in Chicago and the Democrats in New York. The campaign actually opens in the middle of August when the Presidential candidates deliver their speeches of acceptance, although Franklin D. Roosevelt delivered his speeches right after the national convention adjourned. In his acceptance speech the candidate puts flesh on the dry bones of the platform, stressing this plank and soft-pedalling that, and perhaps committing himself and the party upon some issue which the convention has overlooked or ignored.

Methods of campaigning vary. Some candidates have assumed active direction of the enterprise; others have let the national chairman run the show. Theodore Roosevelt and Calvin Coolidge dictated their own campaign strategy; Mark Hanna ran the McKinley campaigns, while Franklin D. Roosevelt relied at first upon his chairman, James A. Farley, who won renown as a skilful chief of staff. As a rule, the chairman commands the undertaking; he confers, to be sure, with the candidate and the executive committee; he requests and takes advice from many quarters; from elder statesmen and party committee-men at all levels whose counsel may avoid some factional imbroglio and help to co-ordinate state and local efforts with the national enterprise; he must have a rare combination of tact, judgment, and executive ability; but in the end he really runs the campaign, selects the issues to be stressed, marshals and manoeuvres his political forces, and plans the higher strategy.

Traditionally, management of the campaign has been centred in the national headquarters. But in 1932 responsibility for the Democratic campaign was decentralized among the state committees, whose chairmen held strategy meetings at national headquarters where a rotating system of visiting counsellors was set up—experiments which achieved notable

success. Chairman Farley established a super-intelligence service at the centre and kept in close contact with state and local leaders from Maine to California. Under his leadership the Democratic organization achieved a degree of efficiency and perfection unprecedented in American politics.

Publicity is the chief weapon in the political arsenal. All the arts of salesmanship are utilized to publicize the candidate and platform: speeches, radio broadcasts, slogans, newspapers, billboard advertising, pamphlet literature, campaign textbooks, etc. The candidate himself may conduct a "front-porch" campaign or a "swing around the circle". The "front-porch" type of campaign was conducted by McKinley at Canton, Wilson at Shadow Lawn, and Harding at Marion; while Bryan, Hughes, Cox, F. D. Roosevelt, Landon, Willkie, Dewey and Truman resorted to the "swing around the circle". The front porch campaign has many advantages; the candidate preserves his dignity and his physical well-being; his speeches are prepared with deliberation and so escape incoherence and mere repetition; the newspapers, receiving advance copies, print them in full. On the other hand, the swing around the circle—a method of campaigning which began with Bryan in 1896—with hundreds of speeches from the rear platform of a train, gives millions of people a chance to see the candidate in flesh and blood, hear the actual tones of his voice, and become acquainted with his personality. But the advantages of this method tend to peter out as the candidate succumbs to the long strain, his speeches degenerate in quality, and the correspondents find little fresh copy in the improvisations of a tired mind. A President seeking re-election may hold himself aloof from partisan controversy and ignore his opponent, as Wilson ignored Hughes in 1916 and as Coolidge ignored Davis in 1924; or he may conduct a stump tour, as President Roosevelt did in 1936.

Speech-making is not, of course, confined to the candidates. All the party committees—national, Congressional, state, and local—send thousands of speakers to flood the country with a deluge of campaign oratory. It echoes from sound-wagons on street corners, reverberates at mass meetings in

packed city auditoriums, and penetrates millions of private homes via the radio waves. First used in 1924, the radio has become a major means of publicizing the proceedings of the conventions, the speeches of acceptance, and campaign oratory. More than a million dollars is spent for radio time by the two parties. Now the candidate addresses two audiences—the smaller one face to face, and the millions outside through the microphone. With his superb radio voice, Franklin D. Roosevelt made extensive use of this device at mass meetings and intimate fireside chats from the White House. On the other hand, radio has widened the range of the demagogue and exposed the incredible burlesque of convention proceedings to public ridicule.

The newspapers are the most effective medium of campaign publicity. Most of them identify themselves with one or the other of the major parties and support its cause throughout the campaign with slanted news and editorials. Others, usually independent, take sides because the candidate or his policies attract them. The press bureau at party headquarters keeps the press supplied with advance copies of the candidate's speeches, with "canned" cartoons and editorials, and with cast plates for the rural newspapers. The campaign utilizes all the media of modern advertising, including billboard posters, newspaper and magazine advertisements, and motion pictures.

First effectively used in 1916, billboard posters reminded the country that President Wilson "has kept us out of war". Four years later the Republicans gave currency to the slogan, "Let us be done with wiggling and wabbling". Other slogans that linger in political memory include "Keep Cool with Coolidge", "Happy Days are Here Again", "The New Deal", "Roosevelt and Recovery", "Time for a Change", "Had Enough?", and "The Fair Deal". Hundreds of thousands of dollars are spent in campaign years upon these appeals to popular psychology. Experts in applied psychology are hired to censor campaign publicity and to advise in the "building-up" process of creating a popular illusion of the candidate and his qualities.

While the newspapers and the radio are the chief weapons of publicity, a vast volume of pamphlet literature is also put out, centering upon the main issues of the campaign and the career of the Presidential candidate. This technique is said to have originated with the Anti-Corn Law League which flooded England with millions of economic tracts. Adoption of prohibition in the United States owed much to the use of this method by the Anti-Saloon League which inundated the nation with car-loads of literature. Both great parties have long set great store upon the widespread distribution of millions of copies of the candidate's portrait, his acceptance speech, and pamphlets on current issues varying in size from four to eighty pages or more. During the campaign of 1896, for example, 275 different pamphlets and leaflets were circulated and printed in ten languages. Although not actually delivered in Congress, many of them are reprinted from insertions in the *Congressional Record* and sent free through the mails under the frank of a Congressman.

The most interesting publication of the national committee is the campaign text-book, a volume of four or five hundred pages for the use of party workers and journalists. Herein you will find the biographies of the candidates, their speeches of acceptance, the party platforms in parallel columns, and the party record upon all major controversial questions.

As the campaign progresses, party managers pay particular attention to special groups of voters and to the doubtful states. In an industrial society like the United States, characterized by the division of labour and specialization of function, the electorate is composed of interest groups organized along occupational lines rather than of individuals. There is the farm bloc, the labour bloc, the business bloc, the veterans bloc, the Negroes, the Catholics, and so on. The attitudes of these influential groups must be borne in mind in the selection of the candidates and the framing of the platforms, for they represent large segments of the electorate. Missionary work for the conversion of these important groups—economic, racial, religious, sectional—requires the right kind of gospel and suitable missionaries. Speakers must keep diverse sectional



interests and attitudes in mind; tariff protection in the manufacturing East; cotton and racial prejudice in the deep South; isolationism in the Middle West; flood control in the Mississippi valley; irrigation and reclamation in the Far West; silver and wool in the Mountain States. It was President Truman's special appeals to the labour and farm vote that won his unexpected victory in 1948.

Doubtful states also require special attention. No serious contest is made in those areas, like the "solid South", where one party or the other definitely predominates. In 1948, however, four Southern States deserted the Democratic Party and cast their electoral votes for the candidate of the Dixiecrats in protest against President Truman's civil rights programme. Doubtful states with large blocs of votes in the Electoral College—such as New York, Pennsylvania, Ohio, and California—become the focus of campaign activity. From them the candidates are chosen; for them the issues are defined; in them the political troops are concentrated.

The various means of publicity—advertising, radio broadcasting, printing and distributing literature—involve heavy expenditure. The total outlay by party committees at all levels in a Presidential campaign is unknown, but the sum is huge. It has been estimated that the campaign funds of the major parties aggregated at least \$28.5 million in 1936, or 67 cents for every vote cast in the election. In the six national elections from 1920 to 1940, inclusive, the Republicans had the larger fund, although they were defeated in half of them.

Party campaign funds are derived from various sources: from the assessment of office-holders under the guise of "voluntary" gifts; from contributions by the grateful beneficiaries of various forms of public subsidy; in the form of gifts from organized labour which made generous contributions to New Deal exchequers; as well as levies on big business which for many decades has shown a preference for the Republican cause. Now that large donations are condemned as a possible cause of governmental corruption, reliance is placed upon small sums from the party membership. In 1940, for example, the Republicans received 39,169 individual

contributions and the Democrats 37,998. Party deficits are common, especially on the Democratic side, and are met by such ingenious devices as the Jackson Day dinners at \$5 to \$100 a plate, the sale of the *Book of the Democratic Convention* which yielded rich returns, and generous cheques from wealthy party "angels".

Campaign financing in the United States is subject to federal regulation. The Hatch Act (1939) limits aggregate individual gifts on behalf of a candidate for federal office to \$5,000. This limitation, however, does not affect gifts to state and local committees or prevent evasion by splitting a large gift among various members of one family group. The Hatch Act, as amended (1940), also limits receipts or expenditures of any political committee to \$3 million during any calendar year. The law requires the national committee to make a fairly rigid accounting of its financial transactions in a sworn and itemized public statement. Political activity on the part of the administrative employees of the federal government is prohibited. Under the Civil Service Act of 1883 a federal employee cannot solicit from or pay to another such employee any political contribution, and no one may solicit such a contribution on federal premises. And the Federal Corrupt Practices Act forbids all corporations from making gifts "in connection with any election" for Presidential Electors, Senators, or Representatives.

As election day approaches, scrutiny of the political barometer becomes the chief national pastime. Party managers on both sides put forth extravagant forecasts of victory, checking their public optimism meanwhile against confidential reports from precinct committees all over the country. In recent years the Gallup, Fortune, and Roper organizations have conducted weekly surveys of public opinion throughout the course of Presidential campaigns, the results of which are published in the form of election forecasts in the newspapers of the nation. These forecasts are based upon the views of a small representative sample of the population. During the early decades of the century the *Literary Digest* poll enjoyed high prestige until its abysmal failure in 1936.

The accuracy of the modern "scientific" polls has been repeatedly demonstrated on the basis of election returns. The American Institute of Public Opinion has made over 120 election predictions in the last decade and its average error has been less than 3 per cent. However, this margin of error was sufficient in the close election of 1948 to account for its failure to predict Mr. Truman's triumph. Opinion about the merits of this innovation varies in the United States. Some hail it as the answer to one of democracy's great needs—that of determining quickly and accurately what people are thinking. Others condemn it as an instrument that undermines our theory of representative government, tending to make representatives into rubber stamps for the wishes of the people as revealed through the polls.

How valuable, in the last analysis, is an American election campaign? Does it educate the electorate in the great issues of the day, diverting their attention for a period from petty personal to public affairs? Do the best men always win? Or, as Lord Bryce once said, are great men never elected President? Does the campaign stress civic virtue and civic responsibility? Or, as the critics claim, is it a colossal travesty, a calculated attempt to asphyxiate the masses with the poison gas of propaganda? Does the great debate enlighten or bewilder the people? Are the results worth the tremendous expenditure of money and effort?

As a firm believer in representative government, I have faith in the electoral process. Certainly, elections are an inescapable feature of our democratic form of government. As one who has six times submitted himself to the suffrage of the people in the State of Tennessee, and participated in many election campaigns, I believe that they have great social value as a means of popular education on public affairs and of evoking a sense of civic responsibility. I deplore, however, the arrangements by which certain minority elements in the United States are disfranchised and the widespread apathy of the electorate. Only about 50 per cent. of our adult citizens bother to vote in Presidential elections.

POLITICIANS, PARTIES, AND  
PRESSURE GROUPS

by T. V. SMITH

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THE politician is to the average honest man an unexpected human type. His essential attribute seems to be a genius for dispute. At any rate, like the lawyer, he is always at it, though without the lawyer's decorum therein. But then the lawyer's task is easy as compared to that of the politician: the lawyer disputes within rules that can contain and do adjudicate the issues; the politician's disputes are outside the rules, and indeed are frequently about the rules themselves. A rule that truly could contain the disputes *over* rules themselves would represent, however, a level of abstraction better suited to end rather than to begin a discussion of politics.

After all demurring, it is nevertheless admitted that the politician is more raucous than the lawyer, and in America at least that is going a long way. From the fact that the politician is always disputing, arises another imputed characteristic, essential to his role though not primary in his character: that he is a chronic compromiser, demanding one thing, in the name of Justice; accepting another thing, in the name of—well, of what? If we must answer that question at once, our answer would itself be “compromised”, for the answer at this stage would have to be “expediency”. That is a derogatory word, at least until it is well sampled. That sampling we proceed to facilitate by now investing expediency with amplitude. Even philosophy, according to the Pollock-Holmes correspondence, must rely on background to distinguish it from gossip.

Let us take a look around before we focus upon the politician as a human type. Conflict is indigenous to the political enterprise. He is not prepared to enter the discussion

who does not admit that equally honest and equally intelligent men may be in profound controversy, without any way out that is mutually satisfactory. Nor is this elemental matter of conflict simple; it is indeed so complex that it involves moral principles as well as economic interests. All three elements of our discussion derive their significance from this central fact of a conflict which is complex and multi-dimensional: the *politician* is called into being by it, the *parties* are defined by it, the *pressure groups* are justified by it. After an immediate remark upon the politician, we shall proceed to observe in order that the role of the political party is to organize and administer the "principles" involved in the conflict; that the role of the pressure groups is to articulate and implement the "interests". But, first, the role of his Honour, the Politician!

### I. POLITICIANS

Politics we may best conceive, then, as the art of fruitful dispute. To be fully fruitful, disputation must end, and must end short of the liquidation of the losing side. Since the only way between equally honest partisans of circumventing this disastrous goal is to compromise, politics is in its very nature a disputing that ends in compromise, or seems to end. Politics is, with Reinhold Niebuhr, "proximate solutions of insoluble problems". The politician is personification of both dispute and compromise, because he is heir to and custodian of the process itself—and that in free lands by popular election.

The defence of politics most required is moral, for its necessity arises from a fundamental disturbance of the consciences of free men. Consider this simple fact: that not all consciences deliver the same dicta. It was on the basis of this diversity of deliverance, let us recall, that Thomas Hobbes founded his notorious defence of totalitarianism for seventeenth century England. Since equally honest men do differ in their convictions as to what is right and since honest men are nerved by their convictions to act out their consciences, freedom of conscience implies disturbance of public order,

and if not checked eventuates in public disorder. Excessive order, then, becomes necessary in order to prevent defective order. Hobbes was right, as against the moralists and theologians of his and succeeding generations, in what he mainly contended. He contended that variety is indigenous, even as to the dictates of conscience, and so that wide initial freedom for the individual requires all but complete tyranny over him for the sake of society. Hobbes was right, I repeat, as matters stood in his generation, and he remains right until men learn to separate the inner and the outer with a clear conception of the division of privilege that must obtain as between them.

Hobbes can be shown wrong only when men accept not merely as a fact but also as an imperative that conscience practise much less than it preaches. If citizens feel that they are privileged neatly and directly to proceed to act upon (that is, to *enact*) every dictum of conscience, then it is as clear to me as to Hobbes that they cannot be allowed freedom of conscience. Such freedom carries duties; and the first of the duties of a free conscience is to delay action until conciliation (on each and every prompting of rectitude) can be arranged between the conflicting dicta of different consciences. Conscience must learn to treasure reticencies no less than urgencies.

This moral fault which fathers democratic politics is stated with full pathos at the very close of the most sustained attempt of post-Hobbesian British philosophy to deal with it, on the last pages of Henry Sidgwick's monumental *Methods of Ethics*. Sidgwick is forced to observe that equally legitimate *methods* of equally "Christian" consciences end at times in prescribing contradictory duties. He closes his book with only a half-hopeful hypothesis rather than with any ringing declaration of faith in the political potential of autonomous conscience. Hobbes was more clear and more bold; he had complete faith in conscience *after it has been politicized*. Moreover, he had the courage to "politicize" it, and then to declare the simple truth that "law is the public conscience". Hobbes was right in his diagnosis, so far as his fanatical age let him understand the issue.

In a democratic society certainly the law is the *public* conscience, i.e., it is the summarized maximum of all that private consciences can agree to enforce. But this maximum for enforcement is only a modicum of what these same consciences separately propose as morally right: the law being clearly in defect here, as clearly in excess there. In truth, the citizen whose thought does not go beyond the law in grasping for what is ideally right, and even the citizen whose action stays merely within the law, is not in either case the ideal citizen. The man who thinks the law is as good as it ought to be, is himself not as good as he ought to be. But the man who is as good as he ought to be will not inflict his goodness upon another.

This plethora of the private over the public embodiment of the ideal requires careful handling if it is not to render the practical fanatical and to make the moral useless. To insist in action upon a private view of the excellent is precisely what we mean by fanaticism. "The fanatic is", as the American wisecrack runs, "only the man who does what God would do, *if* God had all the facts." [Adolf Hitler's trouble was not lack of ideals but impetuosity about ideals that had not been disciplined through confrontation with other ideals. Said General Guderian, at Nürnberg, by way of apologizing for abject surrender to Hitler's "intuitions": "He hypnotized his entourage.. He had a special picture of the world. . . . But, in fact, it was a picture of another world."] Conscience that is esoteric can be as pernicious as the lack of conscience altogether.

On the other hand, the exoteric (i.e., the "law") can become, as Hobbes said, "the public conscience" without the Hobbesian infringement of "private conscience" only when men keep their private consciences private, or make them public only through the consent of other equally propulsive private consciences. Now there is a quickly reached limit on the extent to which all private consciences can become publicly effective: that limit is found in the fact that they do differ and that they do diverge even to the point of cancelling one another out (or, worse still, of liquidating one

another). Until men grow wise enough to see this radical fault in their frames, and honest enough to admit it, they cannot sustain its correction, or even abide its articulation. To abide this radical truth is the first, as to sustain its discipline is the last, mark of a civilized man. To take all this in one's stride requires enormous discipline. And the first agent of this discipline is the political party.

## II. PARTIES

It is only in utopias that there are no political parties. Indeed, to the simplest soul the cessation of politics would spell utopia. If, however, with Justice Holmes, we treasure the simplicity which "lies beyond the complex", we must inquire how men get over the shock and the frustration of discovering that honest and intelligent men are sometimes locked in lethal conflict, from which "neither will run when beaten". It is a fact that in no age of mankind have all good men been agreed on goodness, all just men on justice, or even all holy men on holiness. It is an old story—and a sad one, but one with a moral.

The moral is that since partisan purposes are inevitable, it is better to be conscious of them, to admit them, and strategically to contain them. If all this be possible, it constitutes good news. It is indeed the gospel of democracy. Political parties are great achievements, for they are the instrumentalities of this good news. They rise above "interests" to the generality of "principle" simply because it is impossible to get enough members to make a national party without cutting across lines of economic and other interests. Do we not all deserve justice?—assuming, you see, that the term means something which unites us, over and above the private views of justice, which certainly do divide us.

Principles are of a higher order of abstraction than interests; and the fundamental assumption of most citizens is that if we could see our conflicts with adequate perspective (certainly if we could see them, as the philosopher says, *sub specie aeternitatis*), we would discern that the conflicts have disappeared, and all is properly contained—"discord,



harmony not understood": not only of a higher order of abstraction but also and consequently of a larger spread. If we do not assume this enlarged coverage by ideals, we break up, as in Italy before Mussolini, as in France intermittently, into so many parties that the number is commensurate with and tends to become co-extensive with the interests that are in conflict. If we can surmount this, we survive the plurality of interests and, in transcending them, we may come to contain them.

The complaint is constantly made in America by self-proclaimed "liberals" that our two parties represent nothing, are shams, "alike as peas in a pod". The complaint is substantially true, but not for that reason justified. Lucky rather than unlucky is the fact charged. The interests are so large and so diverse in America that were there not some way to effect partial unification of the differences before the final unification required for national action, there would be little possibility of achieving a national policy through agreement.

Look at the Democratic Party! Why, it is made up of such diverse and laughably contradictory interests that after getting together under common symbols for a united campaign, a Democrat can meet and almost stomach with relish a Republican, by way of relief! Nor is it different with the Republican Party, nor with a Republican when he meets a Democrat in Congress! Unity of legislation *across* party lines in Washington is possible because of the discipline necessary in order to have achieved and to maintain unity *within* party lines. The great and final gulf can be bridged because the separation has been breached by many a footpath above and below the party gorge where the public looks to see dramatic compromise. Accommodation between the parties becomes possible and practicable because each party is already a compromise-unity. Discipline learned piecemeal operates to facilitate unity wholesale.

It is frequently asked why in America we do not have honest party differences, as for instance between the Labour and the Conservative Parties in Great Britain. Assuming

both facts implied, for the sake of the argument, let us further the foregoing view of our political realities by giving one reason why we cannot well proceed as far along the line of interest-demarcation as is assumed for Great Britain. We do not have, in the sense that England has, a professional group to guarantee continuity of the great and continuing services of government, a group to cushion the change of policy from one extreme to another. Since when in America we change we tend to change the personnel as well as the policy, the policy itself must not be too sharply veered if there is to be continuity in indispensable things. So we accommodate ourselves to our own situation by not really indulging greatly differing policies.

Whether that is the whole story may be doubted; but it is a part of the story, and a not unsymptomatic part. I have spoken, however, as though there were distinct principles involved in such policy changes as we allow ourselves. There *are* different emphases as between the parties. But principles are sufficiently roomy that under ideals differently named we may still face the same general direction. Political principles are, as has been said, already compromised by each party to the point that, by meaning something to all party members, they mean little to each member save the glow of a generality somehow shared by all. Party platforms are conscious exemplifications of this wholesome art of strategic obfuscation.

We are, in a pinch, all Democrats, we are all Republicans. Are we not all for Justice, for instance? That is a big, vague ideal that holds us all together in its amplitude. Under that, all Democrats are kept united by a middle-sized principle which emphasizes that equality of opportunity is necessary to ensure the largest returns of justice. Under that, all Republicans are kept together by a middle-sized principle which emphasizes that group mediation is required for prosperity, and if mediation, why not by going concerns that are already prosperous? These are vague approaches to the same from the different: significant enough to let each party feel itself an honest instrument of abstract Justice,

never growing concrete enough to wreck either party's tenuous intra-party cohesion. Any third party can, after an outside canter or two, find room in one of the historic groupings, unless it really wishes to change the over-rules of the game. Then it requires discipline. The two parties themselves have become the final agencies to discipline citizens away from the notion that what to private conscience is clear and full of rectitude, can for that reason pass neatly to its implementation. Together, our two historic parties discipline citizens into acceptance of diverse and conflicting interests as both inevitable and honourable.

### III. PRESSURE GROUPS

It is the business of pressure groups to carry this matter of discipline a stage farther: to show, that is, that what is inevitable and honourable is also desirable. It is food and drink and shelter and sex that make the world go round. These are symbolic centres of concrete demands. They also must be counted in, lest men plant themselves squarely in the mid-air of some idealistic exquisiteness: monasticism instead of the crassness of marriage; pacifism instead of the crudity of patriotism; virgin birth of all necessary institutions rather than the painful bi-partisanship of gradualism. Humanity has large and lovely seed-beds of lust and fulfilment.

When men organize themselves around what they live *on* (rather than what they live *for*), they are keeping their lives safely close to the ground. We are all alike children of Antaeus. It is necessary and honourable that differences be obscured by principle for the sake of unity; but it is also desirable that the unity which politics enshrines and the parties embody should be concrete in nature and full of succulence. Before pressure groups are reprobated, which they at times justly invite, they should be celebrated for the indispensable role they actually play. But for the pressure, men would not know where solid earth is, and but for the pressures of extremes no representative would be dependably able to locate the middle course, since the mean is relative to the extremes.

Pressure groups in America perform the function which, in lands that fragmentize their political loyalties, would be performed by a political party. Where, as in America, political parties represent an accommodation of many interests rather than an affirmation of one, we take care of the interests (1) by recognizing their legitimacy, (2) by acknowledging their right to their own representatives (lobbyists), and (3) by turning to good account as articulate components of every great compromise interests which the several pressure groups obtrude through their lobbyists. This two party-method of containing the interests which the pressure groups serve has this enormous advantage over the multi-party fragmentation of other lands: it is harder for any one group to get its way and it is harder for all together intentionally or accidentally to precipitate an impasse in governance. Pressure groups are all heard and harkened to, as is appropriate in determining public policy; but each is challenged for its ethical credentials when as a part it tries to speak for the whole. Only the party can try that, and only the parties can bring it off.

These considerations were all tied together in America by the political maturity prevailing at the prime: that is, by the assumptions by key founders of the republic (see final statement of it by Madison in *Federalist* No. 10): that (1) men live by bread, all men (not even the poor can be condemned to cake); that (2) no men live by bread alone (there must be principles available as well as interests predominant); and that (3) principles in conflict can be resolved only by distinguishing between thought (in which anything goes all the time, with or without reason) *and* action (in which no privacy of conscience, however sacrosanct, avails aught until consensus can be won by concessions being granted). "Certitude is never the test of certainty."

What the American Bill of Rights really means is that the final ideal, dominant over all interests and predominant among all principles, comes to this: *that persons are more important than any principle*. Abstractions are not to be invoked against persons until, and then because of, such involvement

between persons as threatens to result in damage to one or both or all. No such involvement need occur over ideals among men who are civilized enough to see that what men merely think is nobody's business, and that even as to what men say (in Jefferson's colourful terms) "it does me no injury for my neighbour to say there are twenty gods, or no God. It neither picks my pocket or breaks my leg". Principles must, however, be invoked at the threshold of action, for the sake of all concerned. Even here, *what* principle and *how far to be pressed*, must be a matter of majority agreement.

What James Madison fully saw, and clearly said, in defence of the Constitution is that diversity of opinion and of articulation must be sweepingly allowed, and that diversity of action must be generously if circumspectly allowed, all because liberty produces diversity as its fairest love-child. To cure the "disease" of difference would be, then, to destroy our richest potential. So we must not deal, says Madison, with the cause, but only with the effects. We deal with the effects by accepting as good what flows from liberty, whether we like it personally or not; and of limiting that acceptance only in the name of liberty itself.

Such integrated understanding of our system in America, yields us our politicians as moral middle-men for matter seriously in dispute; it discovers our political parties as schoolmasters to bring us to tolerance of diversified groups and conflicting interests; and, finally, it discloses our pressure groups to us as guarantee that our parties become not merely platitudinous and as insurance that while our heads are in the skies (of principle), our feet remain upon the solid ground (of interest). Our politicians procure us unity-in-difference through parties of general principles, and bequeath us differences-in-unity through honouring the plural commitments of our different sovereign selves.

## THE AMERICAN PARTY SYSTEM

by CHARLES E. MERRIAM

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THE American party system presents many difficulties in analysis and appraisal. At the outset allow me to acknowledge my indebtedness to the comments of that great statesman-scholar, James Bryce, in his *The American Commonwealth* (1888) and his personal counselling of a young student.<sup>1</sup>

The American party system is not contained in any written document. Party is not even mentioned in the Constitution, and seldom is the word found in state constitutions or in federal or state statutes, except those dealing with the regulation of nominations and the conduct of elections.

*Many systems*

There are indeed forty-nine party systems—one federal and forty-eight state, not to mention the many systems of cities and other localities. There are 155,000 governing bodies and there are around one million elective officials. There is no central party organization with power to issue orders to all the others, to discipline them, on the federal scale at least to “purge” them, to direct the formulation of their party platforms, or the conduct of their party representatives in their conventions or in their behaviour in office. It is often not observed that local city elections are and have been for many years largely non-partisan in character, combining and re-combining groups of many kinds.

The party system is a combination of systems, national, state and local, loosely bound together, and it might seem to some incapable of coherent and sustained action on what is now called a party line. Yet the party is singularly efficient on occasion. The party is in fact built upon custom rather than

<sup>1</sup> The American party system has been fully discussed by such writers as Key, Odegard, Gosnell, Holcombe, Herring.

upon laws and judicial decisions. It presupposes a set of attitudes, ways of behaving, which cannot be prescribed by law. It depends upon what we once called *mores* or customs, now rechristened under the name of culture patterns, under which much may be placed—socio-, economic, political, psychological patterns. Our American parties are not always coherent, or consistent, and to some may seem at times hypocritical. They rely on what one British prophet called “illogical moderation”. On many occasions confidence in the partisanship of his followers may convince a leader that that he can “elect a yellow dog” on his ticket, but he may awake to the reality of an “upset”. One-third of the voters are one way and one-third another and the other third are more or less independent. Thus President Truman triumphed over the bookmakers in 1948, but found that he must have difficulties with his voters and their representatives.

Yet can it be said that this division is peculiar to the American party system, or that inconsistency is never found in the fibre of “high-minded” individuals in other fields than the political?

### *Formal framework of parties*

But while the party system is determined in the main by custom, there are some boundaries of structure within which the system operates. These are (1) the Separation of Powers, (2) the Power of the President, (3) the Federal System.

It was not by accident but by design that the Constitution-makers provided a Presidential system in which strong powers were vested in the Chief Executive, such as foreign affairs, defence, appointment, veto, freedom from Congressional choice. The Electoral College was substituted for Congress, and while Congress kept the choice in its hands for a generation, in the end the party system emerged as the preferred means. Thus Presidential leadership under the Constitution has had and now has a vital relationship to the nature and workings of the American party. The desire to make the vote for President count directly has had a strong deterrent effect upon new parties of a permanent type.

Next is the influence of the federal system of government. In the range of forty-nine governments with very large independent authority there is room for a party to find a point of influence and experiment with its plans in so far as they are within the scope of constitutional action. If a party wins, it does not possess by any means complete power but is blocked at one point or another. It never wins all or loses all. Within the same party one group may have radical control of one state and another element may have conservative control of yet another.

The separation of powers into legislative, executive, and judicial prevents the full control of governmental policy or administration by any one branch of the government. The legislative body, unless it has a two-thirds majority, cannot force through legislation distasteful to the President, but on the other hand, by the simple device of withholding appropriations in whole or in part, may affect important aspects of political action.

Beyond these factors is the force of Public Opinion, the real ruler when its voice is clearly heard.

### *Nominations*

A unique feature of the American party system is the legal regulation of nominating methods—primaries and conventions. This is a very long story, however, which I cannot discuss on this occasion.<sup>1</sup>

This system which has many variations in the states provides a method of holding a party election either by direct choice or by delegates to conventions in which candidates are chosen for the following election. In what are called "one party" states (uniformly one way or the other) this nomination is equivalent to an election, as in some of the 'strongly Democratic states. In some jurisdictions individuals may be candidates in both parties and win a double nomination.

The national system runs through a number of variations too numerous to discuss here, but ending in a delegate convention of over a thousand members, in which the party

<sup>1</sup> See my *American Party System*.



platform is adopted and candidates for President and Vice-President are chosen. This may seem like pandemonium to the observer who does not know just what to observe, but there is high politics going on behind the turmoil and the shouting and apparent confusion.<sup>1</sup>

### *Recent changes*

In recent years many social changes have affected the party system. Among these are a shift in the strength of voting groups. The size of the electorate has been increased by the addition of women to voting lists and to political activity; by the addition of negroes in considerable numbers and by their migration to Northern industrial centres in large numbers and their shift from the Republican to the Democratic Party; by the decline in European immigration; by interstate migration. Again, the growth of organized labour has been very remarkable, and their non-party attitude of the late nineteenth century has been changed to one of active participation in political elections. The agricultural group, traditionally dominant, has lost in voting strength (relatively) but has very greatly strengthened its organized action, in part because of its weakness. Economic concentration has continued but the influence of organized business has not increased correspondingly. Note eight years of Theodore Roosevelt; eight years of Wilson; thirteen years of Franklin D. Roosevelt in a period of forty years. Professional groups have become much more politically conscious, especially the American Medical Association and the teachers and to some extent scientists. Regional groups have seen the increased power of urban centres and the shift in numbers to the West and South-West, notably California and Texas. Church groups, in very early days all-powerful, have shown some signs of greater political interest and have taken on a new view of social responsibility in all denominations.

In recent years the spoils system and the machines have retreated in nation, states and cities. Both patronage and racketeering of various types have been pushed to the rear by

<sup>1</sup> For party leadership and the social composition of parties see my *American Party System*, chap. V, VI, VII.

aggressive public sentiment. Sixteen million urban dwellers now operate under the city manager plan, many vigorous mayors have expressed the rising sentiment of citizens, vigorous governors have taken office, along with some weak ones. It is much too much to say that graft has come to an end, but it is accurate to point out that there has been a notable decline in the influence of such practices on party organization and operations.

The patronage system, for many years an important influence in political parties, has been materially changed, especially in the federal service, but also in state and cities by the introduction of the merit system and the career service.<sup>1</sup> At the same time there has been increased interest in managerial efficiency on all levels, and an increase in the number of top flight officials available for service. The recent report of the Hoover Commission, with the joint approval of President Truman and ex-President Hoover, is a striking example of this trend. It provides the ways and means through which administrative efficiency in the federal service may be very materially improved.<sup>2</sup>

There are also important changes and proposals in legislative processes and procedures, both in Congress and the several states, and variations in party caucus, policy committees, and the filibuster which cannot be considered here, however important. There are also proposals by various groups for reorganization of party leadership in the form of party councils, but thus far without significant influence.

Another trend is reflected in the organization of the office of the President with services affecting personnel, budgeting, planning, the Council of Economic Advisers, and in like agencies in many states and cities.

Another significant change is the spread of social legislation and security measures providing forms of relief which formerly were largely, but of course by no means wholly, in

<sup>1</sup> See current reports of the Civil Service Assembly, an association of civil service commissioners throughout the country, and their periodical, *Public Personnel Review*.

<sup>2</sup> See *Public Administration Review*; also reports of the Public Administration Clearing House (Chicago, Ill.).

the hands of the party workers. Forms of insurance and other organized relief are now doing systematically what was done, sympathetically no doubt, by the party agents, particularly in the urban centres. Of course the function of the party worker as a source of political information and an intermediary between the government and the citizen still continues.

But what of large social and political issues of fundamental importance? What bearing have they on the American party system?

Basic political party battles are not new since the battles led by Jefferson, Jackson, Lincoln in their days, and by the Roosevelts and Wilson in another day, with parades, demonstration, and hullabaloo galore. The politics of many of these struggles was better than their administration, and that was the function of the parties in the main. Party discussions at times were models of showmanship and statesmanship in difficult political situations, helping to clarify and crystallize public opinion on policy or personalities. Yet many a time "illogical moderation" was an ingredient, without which the operation of a government would have been extremely difficult. This rests basically on a form of confidence in the judgment of the electors—an expectation that the minority might transform itself into a majority, given patience and persistence with freedom of the press and of association.

### *The future*

But what is coming in the American party system? As an observer, participant, student of theory and practice for some sixty years, I leave the dogmatic answer to the licensed prophets who assume to have a divine revelation. In my own days I have seen the Populists, the Gold Democrats and the Silver Republicans, the Farmer-Labourites, three Progressive parties, headed by Roosevelt, LaFollette, and Wallace, the Socialists led by the genial Norman Thomas, the Prohibitionists, the Communists, the Dixiecrats, and many other minor minors.<sup>1</sup>

Presumably in so large a territorial area as the United States there might be regional parties, but this has not often

<sup>1</sup> See Merriam and Gosnell, *American Party System*, chap. XXII, "The Future of Parties".

happened. Western radicals were sometimes called the wild jackasses of the West, and a group of Dixiecrats appeared in the last election, but most of them came back under the tent before too long. All parties may be labelled as the tools of Wall Street. The labour group might conceivably become a permanent independent labour party, or might try again as the earlier Farmer-Labour party. But most Americans do not take kindly to any permanent class divisions.<sup>1</sup> Economic, social, and territorial mobility has not favoured rigid stratification of groups. There are practically no advocates of a one-party system, which is generally regarded as not a party system at all, but as a camouflage. There are few advocates of a multi-party system with or without proportional representation. There are some proponents of a parliamentary system as contrasted with a Presidential system, but their number is not large. Likewise, no group cares to be known as either conservative or radical or liberal either, or to enter into a grouping which would openly leave out either labour or agriculture or business. However, we are in a rapidly changing world and predictions of what may emerge in the near future are rash indeed.

The political party is now hard-pressed by other groups competing for public interest and favour. Other associations are carrying on much the same functions as the party and are attracting the interest, the enthusiasm, and the support of many citizens who remain indifferent to the demands of active partisan work. If the party is to maintain a position of leadership in the community and perform its high function of implementing the consent of the governed, it will be necessary to alter materially the methods which have often been followed and to adopt others more in keeping with the spirit of the new time.<sup>2</sup> After all a party is not a fundamental end of man or of government, but a useful tool when properly employed for practical purposes in subordination to larger political and social ends.

<sup>1</sup> See Lasswell, *Politics*, p. 173.

<sup>2</sup> *Ibid.*

## SOME ASPECTS OF THE AMERICAN PARTY BATTLE

by CORTEZ A. M. EWING

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IN the hundred and sixty years since the first election under the Constitution, American politics has evolved into a definitive system which defies many of the accepted criteria for the evaluation of political systems. From the atmosphere of the eighteenth century natural-rights' revolt against strong government, it has moved, always hesitantly, and with exuberant professions to the contrary, across the political field to the restfulness of the interventionist state. Modern followers of the magnificent Jefferson sing paeans to his foresight, quote and misquote from his timeless rhetoric, and proceed immediately to the polls and vote for a party whose record leaves no doubt of its intentions to bring the good life through governmental intervention. We have, then, with considerable hypocrisy, moved from the rationalism and agrarian convictions of our forefathers into the politics of the industrial state, about which we know very little and are only recently seeking to understand with any serious intentions.

We have been able to make this transition, with easy conscience, largely on account of the accidental development of the non-ideological party system. Even with some evidence to the contrary, existing chiefly in the writings of John Adams and Alexander Hamilton, the United States emerged as almost unanimously opposed to monarchy and the strong state. The two parties which developed in the last decade of the eighteenth century appealed, then, to the citizens on the issue of which could better protect the country from the twin threats of monarchy and governmental tyranny. As new issues developed, the parties themselves became great popular movements comprising members from all positions on the

deological spectrum. The slavery issue offers a splendid illustration of this feature. Both Democratic and Whig parties had anti-slavery and pro-slavery members. The great conventions of each party struggled over the issue and made the necessary compromises. For thirty years, the slavery issue was handled by each of the two great parties as an internal problem. And it was not until the Democratic party, in 1860, was no longer able to achieve its programmatic compromise that the issue was thrown, with all trappings removed, to the electorate for its decision.

The inability to compromise the slavery issue, with its attendant economic considerations, left only the choice of appeal to intelligence or to arms. For better or worse, the country took the latter course. But once the issue was settled—not by law but by raw violence—formal politics re-emerged on all of its traditional reliance upon the non-ideological formula. High tariff exponents were to be found in each party, as were those who favoured direct election of Senators, soft money, workmen's compensation, anti-trust legislation, and other issues which filled the party platforms at the turn of the century and after. The present Republicans are generally regarded as the conservative party, but Southern Democrats, allied with Northern liberal and labour forces, are generally much farther to the right than their Republican opponents. And since 1938, the informal coalition of Republican and die-hard Southern Democratic Congressmen has constituted the dominant force in our national law-making body.

In the last Presidential campaign (1948), a voter, if he had had to rely upon the formal promises of the two major parties, would have had great difficulty in choosing between Republican and Democratic allegiance. As is customary practice, the platforms were pieced together with the avowed purpose of alienating the fewest possible number of voters. It is axiomatic in America that, either directly or through implication, every programme promises decrease in taxes! It only need be noted, without intending to detract from his incomparable contributions to American political stability,

that Franklin Delano Roosevelt stated in 1932 that taxes could be reduced twenty-five per cent under a wise administration, which he promised to organize if given that mandate. That he more than doubled the national budget of his predecessor was viewed as evidence of culpability only by his Republican opponents who, under comparable circumstances, would no doubt have followed a similar course had they won the election.

Though filled with contradictions, the non-ideological system has one great merit. It makes for slow but easy progress, and without violence, if such may be said of a political system which produced four years of devastating war over the slavery issue. However, the system can scarcely be blamed for not finding the solution, for the solution was present and was not put into practice because a minority section, as attested by the electoral returns, refused to permit the implementation of that democratic decision. By acquiescence in majority decision, the slavery issue could well have passed into the limbo of mere history through constitutional and legislative alterations.

The American party system operates on the presumption that there is general agreement upon fundamental political principles as between the two large parties. It is not, as under the Marxist (or Hegelian) dialectic, that a policy produces its antithesis, that the operation of a free-enterprise system inevitably gives life and substance to its socialist counterpart. Rather, the strength of the opposition derives in the day-by-day criticism of the party in power, and in the consequent conviction among great *blocs* of votes that the Government is, by its policies, definitely depriving them of anticipated returns from the economic order. Thus, in 1932, the "barefoot boys of Wall Street" attack upon the Republicans successfully symbolized the common man's reaction to the charge that the Republicans had become a party which gave primary considerations to the interests of the money power. No pretensions by Mr. Hoover and his apologists could stem the tide of erstwhile Republicans across to the Democratic standard.

The Rooseveltian New Dealers proceeded apace to

ostentatious display of interest in the social welfare of the common man. And though conditions were portrayed as bad—the expected result of Republican mis-rule!—emphasis was placed upon the conspicuous non-discrimination among the nation's people. It was a political masterstroke. For though the Republicans wept bitter tears for sixteen years over impending national insolvency, the dangerous development of dictatorial Presidential power, the debilitation of the American character through the loss of individual initiative under the new paternalism, and the unwarranted destruction of the traditional constitutional distribution of powers, the citizenry displayed a stern resistance to these envisioned threats to the national welfare.

There is another aspect of the party system. American parties are coalitions of interest groups. The successful party leadership, therefore, is that which can enlist under its banner a sufficient number of those groups to achieve and retain power for the party. These coalitions are usually pieced together by opposition leaders. Governments find it difficult to satisfy all those who elected them to office. For the Government leaders, there exists the constant threat of group rebellion. For the opposition's leaders, there exists the possibility of being able to construct a coalition sufficiently strong to defeat the majority party in the next election. There is much smugness in America, which has ascended into scholarly ranks, to dismiss coalition governments of the multi-party states as too unstable to perform the true function of a political system. Except for the "government by the calendar" feature, they are not much different from our own. Coalitions in America are created before the election, while those in multi-party countries are usually formed after the personnel of the parliament has been determined.

Once a coalition is effected in America, the probability is that it will be able to weather the political storm for more than a decade. The Republicans remained constantly in power from 1861 to 1885: the Democrats had made the mistake of becoming identified with support for slavery and for rebellion. Despite a major economic depression, the



Republicans might well have continued but for a revolt in farmer and labour ranks. Agricultural radicalism featured the period from 1880 to 1896. Pursuing their earlier course of staunch individualism and states' rights, the Democrats were unable to satisfy the demands of agricultural radicalism and, thereby, missed the opportunity to establish national hegemony for successive administrations. As a result, for twenty years the Democrats and Republicans fought an inconclusive battle. Finally, in 1893, the Democrats had the misfortune of being in power during a major economic depression. Thereafter, for forty years, they could never convince the public that they were not "bad for business". The "full dinner-pail" argument was conclusive even in labour ranks. Indeed, the two electoral triumphs by Woodrow Wilson derived essentially in the inability of the Republicans to compromise the ideological differences over finance capitalism. R. M. LaFollette was the true father, but Theodore Roosevelt led the liberal "Bull Moose" Republicans against the conservative "Stand Pat" wing of William Howard Taft and Senator Aldrich. By 1918, the Republicans had satisfied most of their dissident labour and agricultural groups. Thereafter, they won three national and six successive Congressional elections.

The dominant Republicans might well have continued in power if they had noted with more sympathy the social effects of the new industrialism. Profits and production, rather than employment and standard of living, became the sacred words of the Republican catechism. Even though the unemployment figures were in excess of two million through most of the twenties, the Republican leaders refused to acknowledge this fact as more than an unfortunate, but inevitable, decree of natural economic law. Steadily increasing capital investment and rising prices to them more than offset the difficulties of readjustment which accompanied the development of a new super-industrialism. This callous policy produced millions of forgotten men who were not subscribing capital for new enterprises nor computing daily their paper profits on stock speculation.

Here was the material out of which Franklin Delano

Roosevelt and his strategists organized the spectacular Democratic party of our era. With the Southern Democrats as a nucleus, they brought in organized labour, most agricultural groups (especially those in the hinterland), Northern negroes, recent immigrants (especially Jews, Italians, and French Canadians), and most small business, which had come to regard the Republicans as essentially a Wall Street protection agency. The New Deal programme was designed to placate these varied and sometimes conflicting interests. On many occasions the coalition appeared to be cracking up, but the immaculate political resourcefulness of Mr. Roosevelt beat off the threats. Even after his untimely passing, the coalition has continued, but with increasing evidence of internecine difficulty.

Some scholars note a cyclical factor in the operation of the American party system, yet there are so many contradictions to be explained away as to produce obscurity in the basic principle. Certainly, economic depressions constitute a major threat to party hegemony. The Republicans survived those of 1873 and 1908, but they lost power after the debacle of 1929. The Democrats went into the political wilderness following the 1893 crisis. It is quite possible that no party will be able to survive a deep depression in our times, as the conspicuous individual insecurity under a highly industrialized economic order would tend to drive sufficiently large groups to the opposition, and especially if the opposition were promising some manner of basic relief. On the other hand, it is unlikely that unemployed workers would follow an opposition programme which promised no immediate improvement. But, since the techniques of public assistance are now well established and generally approved, it is doubtful if any administration will wallow through economic crisis without some definite government programme for individual relief. Mr. Hoover's 1932 explanation of his Administration's difficulties as deriving in the world-wide economic crisis may well be proved the historic obituary of American *laissez-faireism*.

A third aspect of our party system is the role of minor or splinter parties. The splinters represent the attempt to infuse

ideological factors into the system. Without exception, they are reform groups, and in that role they bring a *raison d'être* to our politics. Their greatest function is that of educating the electorate. For the past century, all of our important political reforms have come from the sometimes fanatical efforts of splinter parties. The Anti-Masonic party in the twenties and thirties of last century launched a successful attack upon the undemocratic practices of the legislative caucus in the nomination of party candidates. The ground work for the Emancipation Proclamation (1863) and the Thirteenth Amendment to the Constitution (1865) destroying the institution of slavery, was performed by the Barnburners and Liberty party members twenty years earlier. The Whig party was destroyed because it refused to acknowledge this anti-slavery opinion, and the new Republican party came to almost immediate electoral success when the Democrats were likewise hesitant.

Following the Civil War, agricultural revolt, featured by Granger, Greenback, and Populist movements, paved the way for the adoption of anti-trust legislation, direct election of Senators, and, by some states, of the newer institutions of direct democracy—the popular initiative, the referendum, and the recall. The “noble experiment”—Prohibition—came directly from the efforts of the Prohibition party and the Anti-Saloon League. The Progressives of 1912 educated the country to the need for governmental regulation of industry, and the Clayton Act (1913), the Federal Trade Commission Act (1914), and the long list of similar laws may well be attributed primarily to the preachments of LaFollette and others of his ilk.

Since 1872, more than fifty splinter parties have appeared upon the national political scene. Many of their platform principles have found their way into the programmes of one or both of the great parties. When this occurs, the splinter party simply vanishes from the scene. But, in addition to the educative function, minor parties also have substantially affected the outcome of national elections by securing voter support which would otherwise have gone to the great parties.

From 1876 to 1896, none of the five successful Presidential candidacies represented a majority decision of the electorate. In both 1912 and 1916, Woodrow Wilson secured less than a popular majority, and the same was true for Mr. Harry Truman in 1948. In the last eighteen Presidential elections, seven were plurality rather than majority decisions in popular voting.

A fourth important aspect of the party system is that of sectionalism. Originating in the classic North-South division of colonial times, the frontier process has produced new sections, each with its own political habits and convictions. In analytical studies, I have utilized a five-section classification. They are the North, South, Border, Middle West, and West. The North comprises New England, New York, New Jersey, and Pennsylvania (138 electoral votes); the South contains the eleven secession states and Oklahoma (137); the Border is that group of five states lying just above the Old South (45); the Middle West stretches from Ohio to the Missouri River and from Canada to the Border states (118); and the West includes the other fifteen states (93).

In political allegiance, the North has been dominantly Republican since the Civil War, though the growth of industrialism, with the increase in urban population, has steadily increased Democratic strength. From 1860 to 1928, the Democrats secured a majority of the section's vote only in 1912, when the Republicans split their strength by offering two Presidential candidates. However, the Roosevelt New Deal captured the section in 1932 and 1936. Since then, the parties have battled on fairly equal terms, with New York, Massachusetts, and Rhode Island as the leading centres of Democratic strength. On the other hand, Vermont exhibits an unbroken record of Republican supremacy, while Pennsylvania and Maine have been only slightly less consistent.

The South is completely Democratic. Only in 1920 and 1928 have the Republicans enjoyed any success in dissipating the "Solid South". Some of the hill sections of Tennessee and North Carolina remain outside the stream of Southern tradition and persist in Republican allegiance. Likewise, the

transplanted Kansans in the Northern fringe of Oklahoma are generally able to send a Republican representative to Congress. But the Southern pattern, barring internal disagreement as in 1948, is that of universal Democratic preponderance.

The Border states all have slavery traditions, though they refused to follow the South in secession. Yet, in pre-Civil War politics they generally supported the cause of the South. The foundation of their politics is, therefore, Democratic, and in normal years they contribute consistent majorities to that party. However, the fabric of Republican organization is strong and, even less than states farther North, they are not readily susceptible to landslide elections. Only pockets of industrial activity exist in the section, so the traditional *mores* of agrarian politics generally obtain. Landslide elections are phenomena of recent American history and derive essentially from industrial factors.

Like the East, the Middle West was, before 1932, a predominant Republican section, though the local Democratic organization had more strength than in the states to the East. Ohio, Indiana, and Illinois were close states, with a disposition to vote Democratic in years of national Republican indisposition. Since 1932, they have remained close states, even though the remainder of the country has shifted perceptibly to Democratic favour. In the other four states—Michigan, Wisconsin, Minnesota, and Iowa—the Republicans found little Democratic opposition, though the emergence in the past forty years of sprawling industrial centres, like Detroit, Milwaukee, and the Twin Cities, has done much to alter the situation more favourably for the Democrats.

As the youngest section, the West is colonial-minded. Comprising the high plains, the mineral empire, and the Pacific littoral, it is, except in the latter, a sparsely settled region. Live stock, wheat, and lumber are its most important products. Its essential needs are for reclamation and irrigation, the sizable costs for which can conceivably come only from the national treasury. Consequently, the section has, for a half century, displayed vacillation in its political allegiance. With an astounding clairvoyance, even better than the modern

political pollsters, it pre-judged the outcome of national elections. In five elections, from 1920 to 1936, not a single Western electoral vote was cast for a losing Presidential candidate.

If the Republicans win a Presidential election, they must literally sweep the East and the Middle West, with strong support from the West. If the Republicans can win two Border states, it practically guarantees a landslide victory in the Electoral College. However, if the Border persists in its traditional Democratic leanings, it precludes the possibility of sweeping Republican victory. For control of the House of Representatives, a similar situation exists, even though the representation here is by individual constituencies and not by state units. For Democratic House control, the party must win at least forty-five per cent of the East's seats and forty per cent of the Middle West. Since 1932, this has not been overly-difficult, as the emergence of the industrial sections, with their strong pro-Democratic labour vote, has resulted in large Democratic Congressional delegations from such populous states as New York, Pennsylvania, and Massachusetts. Similar conditions exist in the Middle West, though the section is more agrarian than is the East. It is, therefore, a little less susceptible to Democratic victory trends. However, in 1948, the failure of the Republicans to satisfy the Middle West's farmer demands for crop parity and protection of co-operatives led to spectacular Democratic victories in Illinois, Iowa, Minnesota, Ohio, and Wisconsin. This unexpected development may well lead to the complete reorganization of the Republican party for, throughout its ninety-five year existence, it has consistently framed its policy so as to retain its agrarian nucleus in the East and Middle West. The Middle West's agricultural revolt is, therefore, of fundamental importance to the party.

## AMERICAN POLITICAL PARTIES

by HENRY STEELE COMMAGER

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THE political party, said Edmund Burke, is "a body of men united for promoting the national interest upon some particular principle upon which they are agreed." However accurate this classical definition of the party may have been for eighteenth century England—and its accuracy even here may be questioned—it is wildly inapplicable to the American political party. In so far as any definition is possible, the American political party may be said to be a body of men (and since the nineteenth Amendment of women) organized to get control of the machinery of government. It is not necessary that they be united upon some principle or even agreed upon some general programme. It would be difficult to find any single important policy upon which either of the major political parties have been consistent for any length of time.

It is not clear just when the modern political party emerged in America. There were groups and factions with some resemblance to later parties even before Independence, and John Adams mentions, in his Diary, a "caulker's club" which gave its name to the caucus of later years. These groups crystallized as "patriots" and "loyalists" at the time of the Revolution. Factions closely approximating parties, but lacking both organization and a nation-wide basis, emerged in the debate over ratification of the Constitution as Federalists and anti-Federalists. Not until Washington's second Administration, however, did modern parties clearly emerge. The division that appeared here was along lines that were to be familiar in the future: a division between those who wanted a strong central government, and wanted to use government to advance national economic interests, and who thought in terms of commerce, manufacturing and banking, and those

who distrusted a strong central government, put their faith in the machinery of state governments, and were primarily interested in agriculture. The first called themselves Federalists—a name taken from the title of the series of essays by Hamilton, Madison and Jay advocating the ratification of the Constitution; the second used the name Republican, then Republican-Democratic. The titular leader of the Federalists was Washington himself, the actual leader was Hamilton; the leader of the Republicans was Thomas Jefferson.

As long as Washington remained in the Presidency, party divisions were held in abeyance, for Washington deeply distrusted parties and solemnly warned against them in his Farewell Address; he tried, not without some success, to maintain what would now be called a coalition government. The Presidential campaign of 1796, however, was fought along party lines. The Federalist party—the party of the “wise, the rich, and the well-born”—presented itself as the champion of conservative business interests of the country and the peculiar guardian of the Constitution; the Republican party represented chiefly the small farmers, and championed decentralization of the government. There was, too, even this early, something of a sectional alignment: the strength of the Federalist party was largely in New England and in the tidewater areas of the South; the Republican party found its strength generally in the middle states and the Piedmont South, and along the frontiers.

The election of 1796 was the last that the Federalists were to win. By 1801 Jefferson was in the White House, and thereafter his party—which came gradually to be called the Democratic—dominated the political scene for over half a century; Federalists, though they boasted such great names as Hamilton, John Adams and Marshall, declined sharply in strength. The reasons for that decline, and for the eventual disappearance of the party, are clear enough. First the party was essentially aristocratic, and no aristocratic party could prosper in a society as democratic as the American. Second, the party never built a sound organization, but depended rather upon its talents and leadership. Third, Federalist



advocacy of war with France, with consequent high taxes, plus the enactment of the ill-advised Alien and Sedition Laws, antagonized large elements of the population. The Federalists experienced a brief period of strength at the time of the Jeffersonian Embargo (1807-09) and again during the unpopular war of 1812, but the successful conclusion of that war restored confidence in the Republican-Democratic party, and after 1815 the Federalists quietly disappeared from the political scene.

The Republican-Democratic party was thus left in undisputed control of the political arena. This party—which for convenience we may now call the Democratic—is in many respects the most remarkable political organization in history. It is, today, the oldest and the largest political party in the world. It has controlled the United States government for a longer time than any other party or combination of parties in American history—a total of 86 out of 160 years. It numbers among its leaders such distinguished men as Jefferson, Madison, Monroe, Jackson, Cleveland, Wilson, and Franklin Roosevelt, to name only the Presidents. Jefferson is still its patron saint, and from Jefferson it derives not only its democratic liberalism, but its practical combination of farmer and labour support. Originally dedicated to States Rights, it early abandoned this philosophy and embraced centralism; originally advocating a narrow construction of the Constitution, it found no difficulty in the later advocacy of a broad construction of that document. In the early years its strength was largely in the farmers of the South and the West—the farmers whom Jefferson thought the peculiar depositories of wisdom and virtue; with the passing years it has come to find its strength largely in the great industrial centres, though the rural South remains, for peculiar reasons, loyal to the Democrats.

The disintegration of the Federalist party was followed by what is known, somewhat humorously, as the “era of good feelings”. President Monroe, elected in 1816, was re-elected in 1820 without opposition. Not until the Jackson administrations (1829-1837) did opposition elements crystallize into

a party; then the Whig party, under the leadership of Henry Clay and Daniel Webster, made its somewhat fleeting appearance on the political stage. The Whigs were in many respects the legitimate successors to the Federalists. Whig membership was drawn largely from the more prosperous elements of society, from businessmen, merchants, bankers, well-to-do farmers and planters. In so far as the Whigs had a programme—and American parties rarely have consistent programmes—they stood for the “American system”—that is internal improvements, a National Bank, and aid to manufacturers. Notwithstanding the distinction of its leaders, the party enjoyed little success. The panic of 1837 discredited Van Buren and gave the Whigs the Presidency in 1840, but victory was qualified by the speedy death of President Harrison and the accession of Vice-President Tyler—a former Democrat—to the Presidency. The Whigs won the Presidency again in 1848, once more to have the fruits of success taken from them by the death of their President, Zachary Taylor. That was their last national victory. In the mid-fifties the Whig party disintegrated into its component elements, its place taken, to a large degree, by the new Republican party.

The decade of the 50's played havoc with party lines, and threatened the integrity of the Democratic as well as of the Whig party. For the most part American parties successfully ignore or evade real issues, and achieve unity and success through timely compromises and by offering something to every one of the disparate elements that compose them. Occasionally, however, issues arise so important that they cannot be ignored or evaded. Such was the slavery issue that forced its way to the front in the 1850's; such was the money question of the 1890's, and the great depression of the 1930's.

Unwilling or unable to take a stand on the slavery issue, the Whig party broke up. It was supplanted, very briefly, by that curious organization known as the Know Nothing, or American party. This party, officially dedicated to ignoring the momentous issue of slavery, lasted only two or three years. More important was the creation, out of the ruins of the Whig party and of secession elements from the Demo-

cratic, of the Republican party—the only party which has offered continuous opposition to the Democratic. The Democrats too, had trouble with the slavery issue. Northern Democrats, like Chase of Ohio, refused to follow Southern leadership on this issue. Douglas of Illinois tried to compromise the issue, tried to save the Democrats from becoming the official champion of the slave interests. In this he was unsuccessful. By 1858 the Southern wing had taken control of the party—and proceeded to lead it into secession and war.

Secession, Civil War, and Reconstruction had a profound effect on American party history—an effect still felt after the lapse of almost a century. They put the Republican party in power and enabled that party to hold power for a generation. Because the Republicans came to office in time of war, when Democratic opposition was largely withdrawn, they were able to carry through the whole of their programme without difficulty and, in the process, to attach to themselves the loyalty of business and farmer elements in the North. The war, too, made it possible for the Republicans to claim to be the party of Union and of Constitutionalism, and to tar the Democrats with the stick of secession and disunion.

It is a mistake to suppose that Republican supremacy in the period of war and reconstruction meant a submergence of the Democratic party. The Democratic party remained strong, and with nation-wide support. Though the Republicans controlled the Presidency for all but eight years between 1861 and 1901, the Democrats actually polled a plurality of the popular vote in 1876, 1884, 1888 and 1892: only the peculiar workings of the Electoral College deprived the Democrats of the Presidency on two of these occasions. Not only this, but the two parties were pretty evenly balanced in Congress. In the period from 1876 to 1900, for example, the Democrats controlled the lower House fourteen out of twenty-four years.

In the 1890's, as in the 1850's, a vital issue cut across conventional party lines. Free silver was a symbol of larger economic and social issues—of the contest between the agrarian and the business elements in American economy. This issue

divided the Democrats sharply: one element of the party followed Grover Cleveland in support of the gold standard; the other, and larger, followed William Jennings Bryan. The Republicans, too, were divided by the money question, though not so sharply: there was a Silver Republican as well as a Gold Democratic party in the field in the '96 election.

Bryan, a neglected and even despised figure, made the strongest impression on the Democrats of any leader between Jackson and Franklin Roosevelt. He rescued it from the doldrums in 1896, won its nomination to the Presidency three times; and largely dictated the nomination of Wilson in 1912. He was the last representative of the agrarian wing of the party—of those elements in the South and West that looked upon big business as wicked and upon Wall Street as a den of iniquity. The shift of American economy from agriculture to manufactures, the change from debtor to creditor nation, the growth of international economic interests, all condemned this old fashioned agrarianism to inevitable defeat.

What Bryan was to the Democrats, Theodore Roosevelt was to the Republican party. Economically conservative, he was politically radical. He tried to revive true conservatism—the kind of conservatism that was associated, in America, with Hamilton and Webster, that is associated in Britain with Disraeli and Winston Churchill. He laboured, with only temporary success, to make his party truly national, to base conservative policy on a strict regulation of the malpractices of business, and to make the power of the United States felt in world affairs.

Roosevelt's magnetic personality won him the Presidency twice, and temporary success in his programme, but he was repudiated, in 1912, by his own party. The result was a party split, the creation of the short-lived Progressive (Bull Moose) party, and the inevitable triumph of Wilson at the polls. Though Wilson was neither a strict constructionist nor an advocate of States Rights, his soaring idealism, his intelligent progressivism, and his broad internationalism returned the Democratic party to the traditions of Jefferson. With Republican repudiation of Roosevelt's liberal programme and

Wilson's advocacy of the New Freedom—in many respects the precedent for the New Deal—the two parties came close to dividing on logical lines of liberalism and conservatism. Under Wilson the United States began to catch up on its lag in social legislation. Wilson's progressive programme, however, ended with American entry into World War I; thereafter the Republicans took over and reaction set in.

The Republican party of the 1920's was dedicated to "Normalcy" and isolationism. Never before in its history had it been more reactionary, more frankly the instrument of big business; not since the days of Grant had its leadership been as feeble. An era of unprecedented prosperity—at least for the business community—appeared to justify its policies, but the panic of 1929 and the Great Depression that followed were rooted largely in these policies. For the depression the Republicans had no solution, except the traditional one of trying to restore prosperity to business and hoping that somehow some of it would percolate down to the rest of society. Despairing of the Grand Old Party, the country turned in 1930 to the Democrats. The Democratic Congress of 1931, however, could make little headway against Hoover. Not until the election of 1932 swept Franklin D. Roosevelt into the White House did the Government grapple with the depression in a realistic fashion.

Franklin Roosevelt combined, as had no other statesman in American history, an understanding of the world situation, an enlightened liberalism, a shrewd political acumen, boldness, imagination, and personal magnetism. His own extraordinary abilities, plus the achievements of his party in combating the depression and enacting a "New Deal", assured the Democrats of long-continued tenure. Re-elected to the Presidency in 1936, Roosevelt decided, in 1940, to stand for a third term. Washington had refused a third term, and his example had been followed by every one of his successors, until the "third term tradition" was regarded as part of the unwritten Constitution. Roosevelt broke that tradition, as he had broken so many others. His third term drew to a close when the war against the Axis was still being waged throughout

the globe, and a people who regarded him as the chief architect of victory elected him, by a substantial margin, to a fourth term.

Roosevelt's death, early in 1945, and the successful conclusion of the war, was followed by a reaction which seemed to be serious, but proved merely temporary. The Republicans won the lower House, in 1946—for the first time in sixteen years—and looked forward with confidence to a repetition of the pattern of the 1920's. The election of 1948 however returned Harry Truman to the Presidency, and it began to look as if the nation were permanently Democratic. Not since before the Civil War had the Democrats enjoyed as prolonged a tenure as they have sustained since 1932.

If we look to the functions rather than to the chronological history of the American political party, we can see that the party has been, with the possible exception of the Constitution itself, the basic American political institution. It has administered the government; broken down the artificial barriers of the federal system and the separation of powers; strengthened national feeling; ameliorated sectional and class conflict; and advanced democracy. Each of these functions deserves some elaboration.

The first job of the American political party has been to run the government. The Fathers of the Constitution drew up an admirable blue print of government—and went off and left it. They made no practical provision for the day by day business of politics or administration. They neither anticipated nor recognized political parties. Parties are not only unknown to the Constitution, they were unknown to law until as late as 1907. But the Constitution was neither a self-starting nor a self-operating mechanism. Political parties came along and ran the government and—with the assistance of a growing permanent civil service—they have been doing it ever since. They have selected men for office, conducted campaigns, managed elections, formulated policies and issues, taken responsibility for legislative programmes. On the whole they have done these things well. As yet no alternative method of running the business of politics and government has been perfected.

Among the most important of the historical functions of the party has been the harmonizing of American political machinery. The Fathers of the Constitution, children of the Age of Reason, fabricated what we may call a Newtonian scheme of government, static rather than dynamic. Not only that, but since experience had taught them that all government was to be feared, they exhausted their ingenuity in devising methods of checking governmental tyranny. They manufactured, to this end, a complicated system of checks and balances—the federal system, the tri-partite division of powers, the bicameral legislature, judicial review, and so forth.

Such a system, if adhered to rigorously, would result very speedily in governmental paralysis. For example, if members of the Electoral College really followed their own independent judgment in voting for a President—as the Framers supposed they would—the elective system would break down completely. Parties came along and took charge of the whole business of electing a President—with the result that only three times has the election gone from the Electoral College to the House of Representatives.

Parties implemented the federal system, a system otherwise perfectly designed to produce deadlock. If states actually followed local interests, the American constitutional fabric would be torn asunder—as it was in 1860. It is the party, again, that harmonizes state and national interests. Parties made possible, too, the effective workings of a tripartite government. Theoretically, executive, legislative and judiciary departments are independent and equal. If the Executive and the Legislature actually maintained their independence, government could not function. Parties normally harmonize these two political branches of the American government. When, as occasionally happens, one party controls the executive branch and another the legislative branch, there is usually a deadlock. Fortunately this happens but seldom, and when it does the good sense of American politicians finds a way out.

The third major function of the party has been—and still is—to strengthen national feeling and ameliorate the otherwise dangerous sectional and class divisions. It should never be

forgotten that the United States is comparable to a continent rather than to the average nation, and that it contains within its spacious borders as many geographical, climatic, and economic divisions as are found in Europe or South America. Normally these divisions—roughly sectional in nature—would be disintegrating in effect. Fortunately a variety of forces—historical, political, and economic—have countered the natural particularism of the American scene. Of these forces the three most important have been the Constitution, the frontier, and the political party, and the party is not the least of the three. Occasionally, to be sure, parties have come to represent local or sectional interests, and whenever they have done this they have made for trouble—or disappeared. The Federalists became a purely sectional party—and went under. When, in 1860, the Democratic party split along sectional lines and the Republican party emerged as a strictly Northern party, the Union itself split. The re-creation of the Democratic party as a national institution was perhaps the most effective instrument for the restoration of real Union. It is, in short, the party more than any other political institution that persuades Americans to think nationally rather than locally.

In the same way the party has served to moderate class antagonisms and to reconcile class interests. The party is the great common denominator of American society and economy. This fact is often alleged as a heavy criticism of the American party—especially abroad. Parties do not, it is charged, represent real interests, real groups. They do not adequately represent farmers, labour, business, the middle classes. Nor, it might be added, do they represent whites as such or Negroes as such, Catholics or Protestants or Jews, Baptists or Methodists. They even avoid issues which might give fair expression to the interests of these groups.

The instinct of Americans has always been hostile to the alignment of classes in political parties. For nothing, it is clear, could be more dangerous than such an alignment, and nothing gives greater security than the fact that the two major parties represent all classes and interests of American society.

This does not mean that a particular social or economic



interest cannot make itself felt politically. Particular interests, whether economic or political, have two outlets. The first is within the major parties themselves. Thus anyone familiar with the work of platform committees or of conventions, with the compromises and concessions and arrangements that go into the making of party tickets, knows that within the party various interests are represented and can—by eloquence or by political blackmail—get attention to their demands. The second outlet for particular groups or interests is the third or minor party.

The American party system is definitely a two party system. There has never been a successful third party, and minor parties have rarely polled more than a very small percentage of the popular vote. Yet there have been almost innumerable minor parties—Free Soil, Liberty, "Know Nothing", Greenback, Populist, Farmer-Labour, Progressive, Dixiecrat, Socialist, Prohibition, and many others.

The function of the two major parties is to be all things to all men; the function of the minor parties to be something specific to a particular group of men. The business of the major parties is to capture control of the government and run it. The business of the minor parties is not to capture the government—for that is clearly impossible—but to develop so great a nuisance value that one of the major parties will take over their programmes.

Finally it may be said that the American party has been an effective instrument for democracy. This is a result not of any inherent quality in the party itself, but rather of the dynamics of American politics. Thus each of the major parties has been forced to look for broad popular support, which means that parties inevitably are advocates of an extension of the suffrage. No party has ever taken the risk of openly opposing such an extension: the consequences to it when the extension of suffrage came—as it always did—would have been disastrous. Thus, too, each of the major parties, not being committed in advance to fundamental principles, has ever been on the look out for popular issues. Whatever issues appear to have wide popular support, these

will inevitably be espoused by one or both major parties. Parties know, by experience, that the rewards of election go to the party that has satisfied most popular needs. This does not always mean an aggressive legislative programme, for sometimes the public is weary of legislation and wants quiet. But on the whole the natural pressure of American politics is for an aggressive legislative programme—such a programme as Theodore Roosevelt or Woodrow Wilson or Franklin Roosevelt espoused—and on the whole, therefore, parties tend to champion popular issues.

Nor should it be overlooked, in any analysis of the democratic features of the American party, that the internal structure and organization of the party is, predominantly, democratic. There are exceptions here, to be sure—in the South for example. But those who come to the fore in party politics are the workers, not the aristocrats or the intelligentsia. Almost every political “boss” has worked his way up from ward-leader or county-leader, and the rewards—spoils or recognition—go to the workers. Not riches or even a great name, but hard work and faithfulness, get results in the political party.

Prophecy is notoriously dangerous, yet it is reasonably safe to make some broad generalizations about American parties in the foreseeable future. The United States will continue to maintain a two party system. There will continue to be third or splinter parties: as long as the Electoral College functions as it does now, these minor parties will have only local appeal. The two major parties will continue to have a broad national basis, or will attempt to maintain such a basis. They will differ relatively little on programmes and not at all on principles. Unless some major crisis arises, both parties will continue along moderately conservative lines. Both will seek as candidates “available” men. It is probable that clashes over particular features of domestic policy will be sharp but that in the field of foreign relations the two parties will work together with reasonable amity.

## STATE AND LOCAL GOVERNMENT

by ARTHUR W. BROMAGE

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WITHIN the federal system of the United States are forty-eight state governments and an estimated grand total of 155,000 units of local government. If experimentation by different states is one of the values of federalism, as Lord Bryce indicated in *The American Commonwealth*, this mission has been fulfilled in local government and administration. Each state has its own variations in city, village, county, town or township, school district, and special district administration. There is no single American system of local administration but forty-eight variables. Local governments in Massachusetts, Michigan, and California, for example, conform to divergent patterns of state laws and constitutional principles. While the states have fostered experimentation in forms of city government (weak-mayor, strong-mayor, commission, and council-manager) they have been notoriously monotonous as to their own structural organization.

The framers of state constitutions have been adept with scissors and paste-pots. In other words new state constitutions were widely evolved as copies of older constitutions. As a result no state has struck out in a bold and imaginative way to try a parliamentary system of government with ministerial responsibility to the state legislature. There has been a pervasive acceptance of the elective chief executive (governor) and of the long ballot to elect the lieutenant governor, state secretary of state, attorney-general, auditor-general, treasurer, and superintendent of public instruction. As newer public functions in health, public welfare, agriculture and conservation, regulation of public utilities and unemployment compensation arose, the authority of governors to appoint, with

state senate confirmation, department heads and regulatory commissions has been expanded. So executive structure, with the exception of such reorganized and integrated states as New York and Virginia, is an amalgamation of an elective chief executive, elective constitutional administrators, and appointive, statutory administrators. All but one of the forty-eight states arm the governor with a veto power over the state legislature.

State legislatures likewise fall into common mould—the bicameral type. Only Nebraska has had the initiative to try a non-partisan, unicameral legislature. That experiment has been widely regarded as a success in eliminating the conflicts between upper and lower houses and in making unnecessary the use of conference committees, as in bicameral legislatures. When Nebraska took an experimental and progressive step in the nineteen-thirties to unicameralism it was anticipated that a few states might follow. So far the weight of tradition has been heavier than the force of the challenge by Nebraska. Forty-seven states still use the bicameral system and, in many states, there is no rational theory as to the differing roles in representation and legislative function between upper and lower chambers. In numerous states bicameralism has become intertwined with the rural “gerrymander”, by which rural counties still dominate the legislative process in states where urban population has become dominant, as in New York, Michigan, and Illinois. Argumentation for a unicameral legislature is at once considered a challenge to continuing rural majorities in the legislatures of urban states.

In spite of the many differences in terminology the state systems of judicial administration have a fundamental similarity. At the base are the petty courts of the justices of the peace. Above these minor courts are courts of general jurisdiction to which the great majority of important civil and criminal cases go in the first instance. About one-fourth of the states provide next for an intermediate court of appeals. All the states have, under a variety of names, a supreme court which is the last resort of an appeal within state judicial administration. State judicial organization in more than a

majority of the states is dominated by the frontier principle of electing judges, from the minor justices of the peace to the supreme court judges. Uniformly the state courts have accepted the responsibility of judicial review of legislative acts, which are challenged in specific cases for their contravention of federal and state constitutional principles. The separation of powers doctrine of the independent executive, legislative, and judicial branches, with judicial review as the last resort to resolve conflicts, is a universal factor in state administration.

It is fair to say that the states are far less important as component units of the federal system than they were prior to 1888, or even before 1933. Especially, the Administration of President Franklin D. Roosevelt (1933-1945) extended the exercise of federal authority through greater use of the interstate commerce and taxing powers. As a result federal regulation grew apace in regulation of commerce, labour, and agriculture. The states lost prestige within the framework of the federal government because of their inability to meet the crisis of the Great Depression in the nineteen-thirties. On the other hand the arguments of reformers that the states be combined into eight or nine great regional governments have come to naught. The forty-eight states not only persist but give every evidence of continuing their traditional role within the federal system, as units to provide services in public administration and regulatory agencies over intrastate commerce and business.

Within the fabric of American local government are some 155,000 units of public administration: municipalities, including cities and incorporated villages; counties; towns and townships; school districts; and special district corporations. For the year 1942, the United States Bureau of the Census made a count of these units of local government. The totals obtained by the Bureau of the Census were 3,050 counties; 16,220 incorporated cities and villages (municipalities); 18,919 townships or towns; 108,579 school districts; and 8,299 special districts: or a grand total of 155,067 units of local government. The Bureau emphasized that this count was based on active units only, and that total number

inevitably fluctuates from year to year as governmental corporations are created and dissolved. The vastness of the United States and the difficulties of statistical analysis are demonstrated by the divergent grand totals for units of local government, as determined by various investigators.

The city is only one of a variety and abundance of local governments which flourish on American soil. The county, township, town, village, school district, and special district, together with cities, make up a diverse species. These governments perform for groups of people, within territorial areas, functions which constitute the sum total of local administration in the United States. Local units of all kinds, corporate and quasi-corporate, grew up, like Topsy, for years without any national policy as to the appropriate number. Each state of the Union went and still goes its own way. In the absence of national policy, impossible under the American federal system, these units of local public administration have developed many forms, procedures, and functions. Since the units coincide or overlap one another in territory and population, the picture is one of layers.

In Michigan, to take one specific example, the incorporated village is within the township; the township, village, and city are within the county; the county is within the state; and, interlarded with other local units are school districts and special districts. The village dweller of Michigan lives in a village, in a local school district, in a township, and in a county. He pays taxes to support all four units, to which he simultaneously belongs. In addition he may also live within a special district established for some specific purpose, such as a park and recreation authority.

The city is only one of the units of local government. It is unquestionably the most significant if the test be money expended or activities performed. With the exception of Washington, D.C., each incorporated city is a legal creature of one of the forty-eight states. After the Colonial period the authority to charter cities passed to the states, and this power was never surrendered under the Articles of Confederation or the Constitution of the United States. Thus the city

is still a creature of a specific state, organized under a state constitution and laws. Broadly speaking cities have received more freedom under state law as to their structural organization than counties. This has resulted from "home rule" in about one-third of the states and optional-charter laws.

The national capital, located in the District of Columbia, is an exception to the American pattern of local self-government. The Constitution gives the Congress power of exclusive legislation over the District. While the District has some of the aspects of state and county governments, and many of the characteristics of a city, it is actually an area completely controlled by the Federal Government. Having no local city council, the District obtains its laws and ordinances from the Congress, and is administered by a commission of three members. Two commissioners are appointed by the President and Senate, and the third commissioner is assigned by the President from the Engineer Corps of the Army. Residents of the District have no vote in local affairs, and do not participate in electing the President and the Congress.

The county is a subdivision of the state, a self-governing administrative district of the state itself. It has been held in a more rigid constitutional and statutory mould so far as forms of organization go. In structure most American counties are of the no-executive, long ballot type, with an elected county board and elected county administrators. A noteworthy result of constitutional forms of county government is that there are only a dozen manager-plan counties in striking contrast to more than 800 council-manager cities. Likewise the county has not received generally, throughout the United States, as wide a range of powers as has been entrusted to cities by state law. The city performs more services more fully.

The exact nature of the county as it exists today varies roughly in accordance with the section of the United States in which it is located. In New England it has become largely a judicial district. In one state of New England—Rhode Island—it is not classed as a local government at all since there is no official body to levy taxes or to carry on functions.

In the South and Far West the county is the primary local unit controlling, among other activities, the courts, public health, welfare, public works, and roads. In the Middle-West townships (usually thirty-six square miles in area) survive and perform, in addition to the counties, services rendered by the county alone in the South and Far West.

The states have not generally followed the English practice of creating county-boroughs, although there are some city-counties in the United States. Virginia is the only state with a consistent policy in this respect. In Virginia cities over 10,000 in population are independent of rural counties and carry on both city and county functions in one administrative framework. Elsewhere in the United States counties and cities customarily overlap each other in geography and constituency, and co-exist as local units. In a few of our metropolitan regions city and county consolidation has been achieved, as in Denver, St. Louis, and San Francisco.

In addition to the city, the county, and the city-county (Virginia), there is also found in the United States the incorporated village, otherwise known in some states as the incorporated town. The incorporated villages or towns are, in effect, small cities with a different legal nomenclature. On the other hand the New England towns and the Mid-Western townships are not analogous to cities. The New England town usually contains both an urban settlement or settlements and rural areas within its boundaries. The town meeting, the town selectmen, and the elected town officers, form a pattern of government and administration which is very different from the mayor-council or council-manager plan in cities. This structural gap, however, has been narrowing in recent years with the development of town managers in New England, especially in Maine.

The Mid-Western township is unlike either the city or the New England town. Outside metropolitan and suburban regions it is primarily a small, rural community. In the Middle-West it is quite generally thirty-six square miles in area. Like the county it lacks a chief executive and has a long ballot. It is widely a district for the assessment of property for taxes,



for judicial administration (justices of the peace), election administration, and certain major functions such as township roads. In recent decades vital township functions in health and public welfare administration have gravitated to the county unit system in state after state. It is the old story in public administration of the search for larger area and tax base to support major functions. The township is not a dying institution but it is no longer healthy and vigorous in the functional sense, except in a spotty way in suburban areas. In suburban townships specialized functions and regulations, such as a township fire department and township zoning ordinances, have been developed.

The school districts are the most numerous of American units of local government. The small rural school district, the village school district, the urban school district, and the county school district unit, evidence American determination to put school administration on a basis separate and distinct from the so-called "political" units of local self-government—cities, villages, counties, towns and townships. More than half of the states have thousands of small, one-room school districts; twelve Southern states have county school district units; the New England states and three others have town or township school district units; Delaware has a state system. The school district is, with little exception, a separate unit of government with its own governing, elective school board and appointed administrative officers and teachers. This divides local government into two fundamental parts—school administration and all other public administration at the local level. This dichotomy will surely be preserved for many years to come. The American people seem to pay their school taxes more willingly, and to favour strongly an elective school board which can administer elementary and high schools without benefit of "political" control or advice.

The American pattern of local government is complicated further by the thousands of special district corporations which have been organized to administer special functions. These have been said, facetiously, to come in fifty-seven different varieties, like pickles. Illustrative are park, water, sewer,

drainage, even mosquito-abatement districts. Beyond question special districts fill a need for certain functional activities, but they add new authorities and promote administrative disintegration.

In the United States more progress has been made in the structural reorganization of cities than in the general consolidation and integration of units of local government. The cities have made dramatic progress in the evolution of council-manager charters, casting off older weak-mayor-council and commission governments. In the metropolitan cities the strong-mayor plan has forged ahead. Our cities have progressed markedly in recent decades. The criticism which was levelled against them by Bryce in *The American Commonwealth* in 1888 is no longer valid today. He criticized them strongly at that time because of the development of the municipal boss. With more than 800 cities operating, in 1949, under professional managers, and with the extensive development of the merit system, the cities, in six decades, had outgrown the era of the spoilsmen.

No "expert" in public administration, starting *de novo* today, would plan the present array of American cities and villages, counties, towns, townships, school districts, and special district corporations. Overlapping jurisdictional layers would not be cut so freely from whole cloth. Citizen groups and taxpayers' associations have hammered away for years on county consolidation, school district consolidation, and township elimination. The forces tending to preserve the *status quo* have thus far been too entrenched for the reformers. Legal intricacies impede consolidation and dissolution of units. The necessary financial readjustments are complex. Office-holders of each local governmental unit have vested interests and do not readily relinquish their positions. It is always so easy to defend what is in public administration, and so difficult to effectuate drastic changes. The pattern of American local government, among the forty-eight states, is intricate and extensive. A gradual approach to progressive alteration and consolidation may be possible, in the long run, through public education, but no easy road to sweeping change lies ahead.

## PROBLEMS OF GOVERNMENT PLANNING IN THE UNITED STATES

by JOHN D. MILLETT

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IN a time of continuing social change, ambivalence is not an unusual characteristic. Americans as a whole are as uncertain about government planning as they are about all other aspects of their individual and collective lives. To-day, we may be vigorous in our denunciation of "statism", a new expression much used nowadays in the public press. To-morrow, we may want more schools, more public health measures, more and better roads, greater assurance of economic well-being for the farmer.

Present uncertainties arise partly out of far-reaching changes in the American environment. No one believes these changes have come to an end, but few persons take great satisfaction in their view of what lies ahead. After all, America's history has been unique. For example, industrialization in the United States came rapidly after the Civil War. It contributed greatly to the geographical conquest of the continent, and it provided employment for the large number of Europeans and Asiatics who came to America. The decade of greatest immigration was 1900 to 1910. Since 1929 America has had twenty years of depression, war, post-war prosperity, and an unsought international leadership.

No society can develop certainty in a time of such rapid and unusual events. The United States environment favoured a great industrialization under private auspices, until post-Civil War thinking tended to make a fetish of individualism. Since 1929 Americans have found collective action through government increasingly important to their general well-being. The competing claims of the individual on the one hand (usually the wealthier individuals) and of large numbers in

some social grouping on the other hand have required many and sometimes uneasy reconciliations. In this internal conflict, with its many slogans epitomizing different values and concepts, the phrase "government planning" has occupied an advanced position.

To some persons, government planning means government coercion, or the destruction of all individual liberties. Hayek's *The Road to Serfdom* was welcome ammunition to these individuals, who never noticed that the only experience cited in the volume was drawn from Central Europe with a very different history and culture from America's own. To others, government planning and British Socialism are synonymous. This means that the destruction of the British merchant marine, the liquidation of British overseas investments, and the British trade position are all the consequences of government planning rather than of a long chain of events. The very fact that government operation of some industries may be a last resort helps those who wish to argue that government operation is a failure.

To still others, government planning is the promise of greater and more widespread material benefit, the only hope for preserving individual liberties amid industrial concentration.

Only a few technicians have argued that government planning is no more than a process of formulating general goals for social action and then devising the means for their effective realization.

In the present discussion we may profitably differentiate three different kinds of government planning in the United States.

## II

Historically, the term government planning in the United States has been primarily associated with local government. This was appropriate, since until as late as 1933, the only large-scale government administration in the United States was purely local, existing in our large urban centres. In 1930, the total expenditure of the federal or central govern-

ment was just about 50 per cent. of the expenditures of local government.

This local government planning was at first concerned with "the city beautiful", with improving the æsthetic appearance of the many "boom towns" which were a part of American industrialization. Subsequently, local government planning became more and more concerned with the development of parks and recreation areas, the location of streets and public buildings, the improvement of transportation and the many other physical aspects of urban living. The general goal was that of improving the health and welfare of urban populations, although whether this was to be achieved through greater concentration or dispersion, through public housing or private housing, has remained quite controversial. Architects have dominated local government planning, and fiscal limitations have been the downfall of many "ideal" plans.

Yet the concept of local government planning has become more or less accepted throughout the United States, and there is scarcely a municipal corporation which does not have its planning commission.

### III

In the second place, especially since 1930, there has been a rapid growth of what I shall label "activity planning" by agencies of the Federal Government. In large part this development has been the consequence of two corollary forces. The New Deal was never at any time a coherent plan or programme. President Roosevelt and his advisers wished to stem the decline of production and employment, and more positively to promote the individual welfare of the masses of American people. A wide variety of expedients was experimented with.

At the same time, when this great expansion in Federal Government administration was taking place, the executive branch had to look to American industry particularly for large scale administrative precedent. The so-called "scientific management movement", which had long been fostered by

American industry and to a lesser extent by local government, now influenced federal administration. Paradoxically enough, scientific management emphasized planning, since the process of fixing the goals for administrative action was a cardinal element in the thinking of those organizational and procedural specialists devoted to realizing increased "efficiency" in all forms of group effort.

It has become exceedingly popular, then, in our Federal Government, to frame defence plans, social security plans, water development plans, hospital plans, airport plans, highway plans, agricultural plans, and educational plans. The very diffuse nature of political power in the United States and the close relationship which has developed between certain organized groups and the administrative agencies which promote their special welfare has encouraged this kind of activity planning. Moreover most government problems are faced in individual terms. Few people to-day quarrel about the necessity for this kind of planning. Indeed there are periodic complaints from Congressmen and others that a particular government agency has failed to make adequate plans to carry out its particular work.

But over the course of the past fifteen years the administrative agencies of the Federal Government have done a great deal of individual planning of increasing competence. A wide variety of planning documents are constantly coming from various agencies.

#### IV

In the third place, there is the concept of government planning which can best be identified as "government economic planning". This means the assumption by the government of responsibility for fixing broad goals for the nation's economy and the use of effective means for insuring the realization of those goals. Thus far this kind of government planning is still very much in an uncertain state of development.

On the one hand there is still controversy in the United States about the role of government in economic affairs. As

a practical politician, Mr. Roosevelt held a position quite different from that of Mr. Hoover. If an economy primarily under individual management could provide only declining levels of production and unemployment, then Mr. Roosevelt believed in social action through government to correct this trend. Probably to-day this general attitude is widely accepted. Indeed, as Republican candidate for the Presidency, Mr. Dewey endorsed this attitude in the 1944 campaign. He was more equivocal in the 1948 campaign, perhaps to his regret. The Employment Act of 1946, now a statute of the Federal Government, does no more than give legislative sanction to the political attitude that government intervention can and should prevent widespread unemployment.

To be sure, there are still persons who refuse to accept these political decisions. Mr. Hoover's voice is still heard twenty years afterwards in protest. In a time of general economic prosperity such as the United States has enjoyed in the last eight years, criticism has been louder and more frequent. Some people have apparently forgotten American experience from 1929 to 1933, and others talk as if the depression never began until Mr. Roosevelt was inaugurated in 1933. Few believe, however, that "rugged individualism" will ever again be a practical political philosophy through three and a half years of declining production and employment.

But if a fundamental political philosophy about the relationship of government to the economy has now emerged in the United States, agreement about the tools and techniques of action is non-existent. In practice, the New Deal of the 1930's found only one practical programme of general economic action. This was the expenditure of fairly sizable sums on public works and work relief projects, financed primarily by government borrowing. The political necessity for this kind of action was constantly opposed by those with an attachment for the economic idea of budget balancing.

During the course of World War II there was little national debate about economics. At the conclusion of the war, the political problems were quite different. The large-

scale unemployment which was anticipated in the period of reconversion failed to occur. The Federal Government budget, while reduced from war-time levels, was still four to five times larger than any of the pre-war New Deal budgets. At the same time, war-time tax levels brought a balanced budget. The general economic problems were primarily those of dividing available resources among many different competing governmental and private demands. Even in 1949, the American economy continues to function at levels approaching full employment. The Federal Government budget remains approximately in balance but at continuing peace-time record levels. Sizable appropriations for national defence, for veterans' benefits, and for economic assistance to Europe have prevented any sizable reductions in government spending. Tax reduction has been only modest. At the same time, more and more demands are being heard for additional government outlays for education, health, housing, and social welfare programmes.

It may well be that the very size of Federal Government expenditures and Federal Government taxation provide an answer for the present to the problem of techniques for government influence upon the economy. Certainly there is no sentiment of any widespread size in the United States for government ownership of any important segment of the economy. For the foreseeable future, government's impact will be mostly indirect. Whether these techniques will be sufficient to achieve a continuing full employment remains to be demonstrated.

One other factor should be added. In its economic as well as in its political thinking, the United States generally tends to be continental. The post-war international leadership which the United States has had to exercise still rests on uneasy foundations. Economically, there is little understanding about the relationship of national material well-being to international conditions. It is ironic indeed that a nation which professes to desire economic recovery in Western Europe is unprepared to purchase greater quantities of goods from those same countries as their production expands.



Americans fail to understand the extent to which their own economic well-being since the end of World War II has depended upon the volume of foreign exports. Those exports must either continue to be paid for by internal taxation or by external importation. At the moment it looks as if the nation's political processes will favour the first rather than the second. The recent action of the United Kingdom in devaluing the pound sterling offers no reassurance on this score. American goods for export will be more highly priced on foreign markets, which gives British traders a competitive advantage in those markets. Devaluation will have little effect apparently in increasing American imports of British goods, although it may encourage some further tourist traffic. For all the good intentions voiced after the September economic conference in Washington, America's place in a world trade system remains uncertain.

Yet all the present interest in political-economic organization has done one grave disservice. It has tended to make us forget or overlook the fundamentals of economic well-being. The high level of prosperity at present enjoyed in the United States is not the result solely of organizational arrangements. It is the consequence of the extensive raw material resources, the productive plant, the technological development, and the labour supply of the United States. These are, of course, the basic factors in any economic situation. Just as Americans generally fail to realize the fundamental conditions which create the need for "austerity" in Great Britain, so there is a general failure to acknowledge the unusually fortunate status of America in material resources.

Government economic planning can never accomplish miracles. It can do no more than work with available resources and prevailing institutions in an attempt to ameliorate or perhaps improve existing circumstances. Government economic planning in the United States will necessarily be different from that in any other country in the world because of the fundamental differences in material resources, in distribution of income, and in political traditions.

## THE PROBLEM OF LOYALTY IN GOVERNMENT SERVICE

by FRANCIS BIDDLE

(Formerly Attorney General of the United States)

"Liberty is not a means to a higher political end.  
It is itself the highest political end."—LORD ACTON.

ON 15th June, 1949, President Truman suggested at a press conference that the United States was experiencing a wave of hysteria as a result of spy trials and loyalty inquiries; that every great crisis brought a period of public hysteria; that this would die out, as it always had, when the stress was over. The present situation, he thought, was like that which confronted the country at the time of the Alien and Sedition laws of 1798.

Historical analogies may be misleading, for the pattern of history never precisely re-extends itself. If fear of the French Revolution was largely responsible for the Alien and Sedition laws in America, it was also a moving cause in England, particularly after the Terror began in 1792. It is reflected in Pitt's "Committee of Secrecy to investigate the charges of promoting a Convention to subvert the Constitution and introduce French anarchy"; in the suspensions of the Habeas Corpus Act, the state trials of 1794, the Seditious Meetings Act of 1796, and the suppressive "Four Acts" of 1817 and "Six Acts" of 1819. For a long generation needed reforms were blocked by the simple process of identifying them with subversion and revolution. "Everything", wrote Cockburn in his *Memorials*, "rung and was connected with the Revolution in France; which, for above twenty years, was, or was made, all in all." Fear bred timidity. Whitebread, who with other radical Whigs had joined "The Society of Friends of the People" in the spring of 1792, wrote to Cartwright in

1814: "I am fearful of joining any association, lest I should do more harm than good."

The causes which brought about the French Revolution did not exist in Great Britain. Yet, according to Sir Thomas Erskine May: "There is no longer room for doubt that the alarm of this period was exaggerated and excessive." Fear of the consequences of the young Russian Revolution ran through the sedition trials in the Federal and State Courts in the United States during and following the first world war. Rose Pastor Stokes in 1918 was convicted and sentenced to ten years by a United States District Court (the conviction was later set aside by the Circuit Court of Appeals) for arguing against the war—"I am for the people and the government is for the profiteers." The trial judge denounced the Russian Revolution as "the greatest betrayal of the cause of democracy the world has ever seen".

Did a wave of hysteria exist in America? The *New York Herald-Tribune* commented that "some persons, some institutions, are indulging in a familiar brand of hysterics". The *New York Times*, in a survey of the public's reaction to the "spy" investigations and the trial of the Communists in New York, a few days after the President's remarks, reported mixed trends. In New England there was sharp reaction against the demand of the House Un-American Activities Committee for a list of college text-books (a "check-up" promptly disowned by the Committee when they heard from their constituents). In the South the feeling against Communists was running very strong, and common sense appeared to be giving way to hysteria. In the Middle and Far West, and indeed throughout the country generally, there was misgiving and perplexity. The *Times* in an accompanying editorial suggested that the reporters whose questions had elicited Mr. Truman's comments "were aware of something unhealthy in the country's present state of emotion". However, a correspondent thought that the President's remarks might lead foreigners to suppose "that our country is in the grip of mob violence . . . legalities . . . thrown to the winds . . . civil rights . . . abrogated in an orgy of nerves". Of course nothing like that existed. Yet in

1947 the President's Committee on Civil Rights had reported that "a state of near-hysteria now threatens to inhibit the freedom of genuine democrats".

Leaders of American thought in many fields are deeply disturbed by what is going on. The distinguished historian, Henry Steele Commager, sees a real danger in the increasing fear of ideas. Professor John Dewey, though admitting "in the abstract" that membership in the Communist Party "unfits one for the office of teaching impressionable students", nevertheless believes that such a prohibition would "add fuel to the flame of blind and emotional action". School teachers voted to exclude Communists in a resolution overwhelmingly adopted at the annual meeting of the Public Education Association. Dr. Conant, President of Harvard University, although opposed to the appointment of Communists as members of the teaching profession, would not try to root out "fellow-travellers" from the faculty—a programme followed in Washington and other universities. And recently, Robert M. Hutchins, President of the University of Chicago, has attacked in stinging language this effort "to persecute people into conformity . . . the dreadful unanimity of tribal self-adoration . . . characteristic of the Nazi State".

The question confronting the Federal Administration, and, I venture to assert, the Government of Great Britain, cannot be easily answered, because it involves the clash of two fundamental social considerations, apparently in conflict—protection of the State, and our own tradition of free opinion and thought. Most of us have come to believe that the U.S.S.R. is totalitarian, imperialistic and ruthless. We have watched her techniques of espionage and fifth column further her thrust for chaos successfully in more than one country, and threaten the stability of others. Germany in such ventures, for a time was highly successful. Russia bored into Canada. We must protect our own integrity from any such internal dangers.

Within the sphere of government in our two countries it is interesting to note the preventive measures adopted. The

Prime Minister in March, 1948, answering questions on the floor of the House of Commons, thought it inadvisable to try to define the kind of "organizations the membership of which would render a civil servant ineligible for employment". He indicated that the employee would be told the charge against him—"chapter and verse"—and given an opportunity to answer it. There would be an Advisory Board of three retired civil servants. The programme would be moderately administered. There would be no general purge. Those who could not be trusted would be excluded from secret work, so that Communists would be kept "in the State service except in a very limited number of posts". But the sources of information could not always be revealed—"if we do that, we destroy anything like an effective civil service". A year later Mr. Attlee told the House that fifty persons had "received notice": three had resigned, ten were transferred, sixteen reinstated, twelve were awaiting transfer, none had been dismissed. From this it would appear that the problem had been soberly handled; and that, in accordance with British tradition, the Ministry is given very broad powers—far broader than in the United States—and is expected to exercise them with judgment and discretion. The machinery of investigation and review sounds simple and informal.

The American system is far more elaborate. On 21st March, 1947, President Truman by Executive Order prescribed procedures for the loyalty programme applicable to federal employees. Investigations of incumbents and of applicants for appointment are made, in most cases by the Federal Bureau of Investigation. If the preliminary investigation turns up "derogatory information with respect to loyalty" a full field investigation is conducted. If the result warrants, the individual, if an incumbent, is notified of a hearing before a loyalty board in his department; if an applicant, before one of the fourteen regional boards set up in the civil service. Appeals from dismissals of incumbents are allowed to the head of the department; and, in both types of cases, finally to a Loyalty Review Board, set up under the President's order. No court review is provided. The Review Board

administers the programme, issues regulations, supervises and unifies the procedure, conducts "audits". However, it has no power of subpoena, nor funds with which to pay the expenses of witnesses. Its minutes are not available to the public. All hearings are held in secret, out of consideration for the employee.

The basis for unfavourable action is disloyalty to the Government of the United States; but "disloyalty" (or "loyalty") is nowhere defined. The "standards" for a finding of disloyalty include "membership in, affiliation with, or sympathetic association with any foreign or domestic organization . . . designated by the Attorney General as totalitarian, Fascist, Communist, or subversive". What "subversive" means is not specified. Such designation is conclusive. It is emphasized, however, in the President's statement accompanying the order, and in the regulations, that "membership in an organization is simply one piece of evidence . . . in a particular case". However, under the provisions of certain statutes, which have been in force since before the war, members of an organization that advocates the overthrow of the government by force or violence, must be dismissed, and these provisions have been construed to apply to members of the Communist Party.

The President's Order provides that "the charges shall be stated as specifically and completely as, in the discretion of the employing department or agency, security considerations permit". Investigative agencies are authorized to refuse to disclose the names of confidential informants.

Shortly after the Order was promulgated concern was expressed that the administration of the programme might be abused because of lack of any requirements that the issues be clearly defined, the charges supported, the employee confronted with the evidence, the adjudication based on specific findings of fact. Has this concern been justified?

As of 30th June, 1949, an analysis made by the Review Board showed a total of 9,987 cases received in the loyalty boards, of which 1,978 were discontinued by the Federal Bureau of Investigation, 914 were Department of Army

cases, not reported to the Review Board, 748 employees left the service prior to any decision, 1,172 field investigations were pending, leaving a net total of 5,175 adjudications, as follows:

Eligible determinations .. .. .	4,879
Ineligible determinations .. .. .	296
Dismissed .. .. .	91
Restored after appeal .. .. .	61
Remanded for further consideration	10
In process of appeal .. .. .	134

From these statistics it would appear that the programme had been enforced with moderation, and review exercised with substantial relief.

Are the adjudications just? Is the programme effective? What are the results?

Without access to the records, which are not available, no conclusive answers can be given to these questions. There is an indication from records which, through the courtesy of the employee involved, I have been able to examine, that "loyalty" is a varying conception in the minds of the members of the boards, often determined without clear objective, necessarily changing colour with individual prejudice or preference—homage to free enterprise, for instance; or traditional Southern opposition to Negro "equality". Let me give a few examples.

A member of a loyalty board asked these questions:

Q.: "Did you attend any meetings of other organizations . . . which held non-segregated meetings? Apparently that was at least a part of the attraction of these organizations. It is rather unusual, you will have to admit, for persons born and raised in Texas to feel that that would be the reason to join the Washington Book Shop (listed by the Attorney General), because he could there attend unsegregated meetings."

A.: "There are other people from the South too who have awakened to what this matter of segregation means."

Q. "What were your views regarding the Spanish Revolution?"

. . . . .

Q. "Did you ever hear by any of your friends or associates the war described as an imperialist war?"

A.: "It might well be."

Q.: "What was your Government bond-buying record?"

The employee was dismissed but ordered reinstated by the Review Board. The example is not untypical, and illustrates how far the examiners, usually not lawyers, relieved from the limitations of the hearsay rule (the hearings are recognized as administrative, and the rule expressly does not apply), and without the constraining force of tight definition, tend to wander from the issue.

Dorothy Bailey was discharged after ten years of competent service with the Department of Labour. There is, apparently nothing in the record, standing alone, that could support this action, which must therefore be rested on reports of informants presumably unknown to Miss Bailey. She was accused of being a Communist. Her lawyer requested "some identification of this malicious gossip". "If this testimony is true", answered the chairman of the Review Board, "it is neither gossip nor malicious. We are under the difficulty of not being able to disclose this."

The statistics I have cited do not indicate the psychological or political effects of this attempt to probe men's minds. "The thought of a man is not triable; for the Devil himself knoweth not the mind of man." Before arriving at any conclusion as to the wisdom of the programme, a study would have to be made of the effect of the decisions not only on the employee but on his associates, and on possible future applicants. Will it encourage men with ambition and imagination to seek public employment? That so small a number of individuals were discharged or resigned—over 2,300,000 were given a preliminary check—suggests that there is no such a thing as a "red danger" within the government. Is this end then worth the means? I am not speaking



of actual expense—a substantial item—but of the partial surrender of a social good, the freedom in our democracy up until now from this kind of surveillance.

A good deal can be said for the English system of attacking the problem administratively, probing weak spots rather than trying to make a grand over-all sweep. The administrative approach sets up no precedents to plague the future, since it is by definition pragmatic and discretionary. On the other hand the American approach involves certain of the characteristics of a criminal trial, in which punishment is the result of crime. Charged with evil association (the most common complaint) the employee has none of the defences afforded every defendant in a criminal case. Yet the punishment may be far more severe than a year or two in jail. Re-employment in the Federal Government is, of course, impossible. Obviously public service in state or municipality would almost certainly be barred. And great difficulty would be encountered in getting a private job, if what happened to the ten script-writers in the Hollywood investigation by the Un-American Committee of the House of Representatives is any indication. They were promptly discharged by their employers with no charges against them except the contempt citations for their refusing to answer whether or not they were Communists.

Although the investigations are held in secret it is impossible to conceal from the employee's associates in the office that an investigation is on, and the news spreads very fast through the department. It has been claimed that this has created a sense of panic in the government services—who will be next? That I gravely doubt. Again judgment is difficult. But I suspect that among those rare employees who are distinguished by originality or a sense of critical values, creative thinking and independent action is not encouraged. Men will not long struggle against the inhibitions of external thought control, but will prefer the more timid and cautious approach, if the alternative is loss of their jobs.

Take these questions, for instance, in another loyalty board case:

Q: "Do you have 'Soviet Communism', by Beatrice and Sidney Webb?" The witness had it, but had never read it, and added hastily: "I should like to say, in connection with the Webb book, he was a British Lord."

In the same hearing a witness was asked whether "you ever feel that Mr. X's mind runs to politics. . . . We have information . . . concerning which I want to get either a verification or a denial from you, and I would name the person if I had the name . . . that this person and you were discussing Mr. X. and you told this person that X's mind runs to politics. . . ."

There can be hardly any doubt that those who have been put through the degrees of investigation, whether or not ultimately cleared, often suffer acute humiliation. They must pay for the expense of their defence; and, if suspended pending the final decision, receive no pay until reinstated, when the payment is made retroactive.

The procedure in the loyalty test cases tends to fix a pattern which will be difficult to break, and which is being reflected in the individual States. Last winter the State of New York adopted a statute calculated, it was believed, to eliminate from the public schools, superintendents, teachers and employees, "who are members of subversive organizations". The legislature solemnly found and declared "that members of such groups frequently use their office or position to advocate and teach subversive doctrines . . . sufficiently subtle to escape detection in the classroom". Accordingly the Board of Regents (in charge of the public schools) was directed to adopt an appropriate procedure to disqualify and remove such undesirables, and to "make a listing of organizations which it finds to be subversive", and permitted to use the list already prepared by the Attorney General of the United States.

The State of Washington, in the preamble to a statute adopted in 1947, warns us that: "These are times of public danger; subversive persons and groups are endangering our domestic unity, so as to leave us unprepared to meet aggression, and under cover of the protection afforded by the bill of rights . . . seek to destroy our liberties and our freedom by

force, threats and sabotage, and to subject us to the domination of foreign powers"—and supports this "finding" on language of J. Edgar Hoover, Director of the Federal Bureau of Investigation, to the effect that Communist "propaganda . . . has been projected into practically every phase of our national life". The statute creates a Fact-Finding Committee on Un-American Activities in the State of Washington to investigate facts concerning individuals or groups "whose activities are such as to indicate a purpose to foment internal strife, discord or discussion . . . confuse and mislead the people, and impede the normal progress of our state and nation". In the opinion of these legislators stimulating discussion apparently prevents normal progress. Contrast the words of Thomas Jefferson, spoken 146 years ago, to the people of that little country, but a quarter of a century old, who had just elected him their third President:

"If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it."

Is all this evidence of hysteria? It may be that the voters have cooler heads than those whom they elect. But a trend is very evident. It is not, as some seem to think, of very recent origin, but may be traced from the first world war, when sedition was revived in the heat of the fear of the Russian Revolution, aliens were brutally raided for deportation, and the New York legislature, over the eloquent protest of Charles Evans Hughes, excluded five duly elected Socialists from membership, just as, 150 years before, John Wilkes, under indictment for seditious libel, was expelled over the protest of Edmund Burke and the petition of the Middlesex electors. But such guilt by association is a new conception in our customs and laws. It is a complete departure from the fundamental concept that guilt must be personal. And how indeed can a man be judged for his beliefs and not on his actions, if we are to preserve the basis of popular government, the conviction that out of open and free discussion emerges a mature public opinion?

## THE UNITED STATES GOVERNMENT AND THE FUTURE

by THOMAS K. FINLETTER

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United Kingdom)*

IT is rash to speak of the future of a form of government in a fast moving time such as we are now in. About all one can do is try to appraise the direction and strength of the forces which are working to change the government and make a guess as to the effect these forces will have. I do not mean by this to exclude the possibility of improvement in the procedures of the American Government by the conscious direction of the people quite apart from the imperative of events. But I do think that the impact of world affairs will be the controlling factor in the evolution that will take place.

For the Constitution, written and unwritten, will change. No structure of government is static. The American Constitution, though, is less susceptible to change than most. The forces bearing on it are and will be powerful, but so is the inertia of the Constitution.

The Constitution of the United States, being written, is not open to the same kind of gradual evolution as is, say, the British Constitution. The most important procedures of the American Federal Government can be changed only by formal amendment of the Constitution, and the process of amendment is uncommonly difficult. Moreover, the authors of the Constitution put into this rigid framework a number of devices of government which were intended to deny power to both the Executive and the Legislature. The result is an inflexible balancing of power between these two branches which makes it very difficult to adapt the Constitution to the needs of post-World War II America.

The most important of these devices is the fixed terms of office of the President and the two Houses. The members of

the House of Representatives and the Senate, secure in their fixed tenure, which neither the President nor anyone else can shorten, are not subject to the direction or discipline of the Executive. No penalty can be inflicted on the members of the House if they defeat the President. On the contrary, the two Houses are required by their own self-interest and that of the people to defeat the President frequently. For unless they do Congress will lose its position in the government and freedom will be endangered. Let me explain.

The popular election of the President came about by accident. The Philadelphia Convention which drafted the Constitution was determined that the President should not be popularly elected. A series of unforeseen happenings reversed this purpose of the founders, and the President of the United States is now chosen by popular vote. Being so chosen, and being the only official of the United States Government who is elected by the whole people, the President has enormous latent and sometimes enormous actual power, even in time of peace.

Moreover he has this power for a fixed term, for Congress cannot shorten his tenure except by impeachment. Lacking the ultimate authority of dismissing the President from office, Congress cannot afford to do the things that a parliamentary legislature can. It cannot accept bill after bill and policy after policy as can a parliamentary legislature which is secure in the knowledge that, if it chooses, it may dismiss the executive. Congress must resist executive pressure almost in direct proportion to the strength of that pressure, unless Congress is to wither away and unless individual freedom is to be imperilled. For (at least so it seems to me) individual freedom cannot be assured except under a form of government in which the ultimate power is in the people acting through a representative legislature which controls the flow of executive power.

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Now this rigid Constitution, embodying the purpose of its authors to deny power in the interest of freedom, is being subjected to heavy pressures by internal and external happenings, most of which are demanding strong policies and therefore increased power and effectiveness in the Federal Govern-

ment. In domestic matters—if one can make this distinction—the Federal Government is now called upon to do things which in 1787 would have seemed excessive in any government and unthinkable in the American federal structure under which the states were sparing of their grants of power to the central government. In foreign affairs the increase in pressures on the Federal Government is even greater. After a century and a half of respect for Washington's and Jefferson's advice to avoid permanent alliances and entanglements with Europe, the United States has abandoned the idea that it can remain isolated behind its ocean moats, and is concerning itself actively with problems in all fields—political, economic and military—in all places where the interests of the United States are affected—that is, in the whole world. The Constitution is being called upon to handle an entirely different kind of task from that which its authors prepared it for. Events have reversed the judgment of the authors of the Constitution, who saw in the balance of power between the Executive and the Legislature a guarantee of liberty through the denial of power to government. It is still necessary to guard jealously the exercise of governmental power in the interest of freedom, but it is no longer possible to protect freedom by the simple device of denying power to government.

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The Constitution has always conceded one exception to this general rule of balancing the two branches of government against each other in the interests of individual freedom. From the beginning of the Republic, war has suspended the workings of the separation of powers and the conflict between Executive and Legislature. In the Civil War and in World Wars I and II, the Executive took or was given all the power he needed to preserve the union or defend the country. The negation of power is a peace-time phenomenon only. And even in peace-time there were sporadic exceptions. The system allows occasional short-lived peace-time bursts of power, during which the Executive dominates the Congress.

These sporadic bursts of power in peace time have come from the popular leader Presidents, such as Thomas Jefferson,

Woodrow Wilson and Franklin Roosevelt, who used the great prestige which the popular election gave them to upset, for a while, the balance of power and to put over great policies such as the New Freedom and the New Deal. But the bursts of power of the popular leaders have never lasted long, unless a war happened; and the normal condition of balance of power has been quickly restored. The balance is usually restored early in the administration of the popular leader himself. Only the two World Wars continued beyond their normal term the early rushes of Wilson and Franklin Roosevelt. And always in the past the popular leaders have been succeeded by orthodox Presidents who respected the separation of powers and the normal condition of balance between the Executive and the Legislature which the Constitution seeks.

In the period after World War II we have not followed this pattern faithfully. We have not returned to Normalcy as in 1921. The present Administration is vigorous. The 1948 election gave new prestige to the Executive, and the cold war and America's new responsibilities abroad have made it necessary that this prestige be used. In foreign affairs we have today little of the negative attitude which characterized the administrations of Harding, Coolidge and Hoover. The great measures of foreign policy—post-war relief and loans, the Marshall Plan, the Atlantic Treaty—have been accepted by both parties. There are some rumblings of resistance, as on the military aid programme, and perhaps these rumblings may develop into something more serious; but to date the record shows the Constitution adapting itself quite well to the new demands of foreign policy.

In domestic matters, the record is the opposite. Despite the President's victory at the polls in 1948, the 81st Congress has defeated utterly the Administration's civil rights programme, has blocked the revision of the Taft-Hartley Labour Law, has intervened increasingly in the details of Administration policies, and generally has shown its determination to maintain its independent place in the American system.

It is much too early to say whether or not the Executive and Congress will be able to adapt themselves and their relations

to each other to the new role of the United States in world affairs. It may be that the wisdom of Congressional and Executive leaders will convert the antagonism which is inherent in the separation of powers into a partnership in the face of danger which will be adequate for our purposes. It may be possible to restrict the conflict of Executive and Legislature to domestic matters and to maintain an executive-legislative truce on matters which bear on the new responsibilities of the United States abroad.

There are of course difficulties in the way of such a course and there are certain unsatisfactory aspects of it if it succeeds. It will need considerable subtlety and character to preserve this dichotomy between domestic and foreign affairs. When is a given piece of legislation a matter of foreign policy as to which the executive-legislative partnership should work, and when is it a domestic matter on which we can let loose the traditional conflict of the separation of powers? Can we separate domestic and foreign policy in this way? Will we want to continue the suppression of debate which the bipartisan truce between Executive and Legislature involves? Will not occasion arise when the need of Congress to defend its position in the American system will seriously damage some important policy in this new and extremely difficult role in the world which the United States has taken on?

All these questions will be answered by the course of events in the next decade. If things continue as they have since the end of the war, I believe that we will see no great changes in the procedures of the Federal Government. But if the improvisations do not work, if some great policies which the people want break down because of the failure of the Executive and the Legislature to maintain the compromise, if, in short, the original purpose of the Constitution succeeds in holding the Executive and the Legislature at arm's length in a condition of balanced powers, then public opinion may insist that something be done to change our governing procedures so that they will be able to do what the people want done.

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There has already been some speculation as to what might



happen in such circumstances, one of the most interesting being by Professor Harold Laski. He has suggested that the nature of the American political parties will change; that the existing mild differences between them will increase; that one of the parties will become more conservative and the other more advanced; and that both parties will develop a strong discipline among their members by means of which the parties, acting in concert with the man whom they have installed in the Presidency, will control the Congress and the Government. Presumably this divergence in party beliefs which Professor Laski foresees will come from differences over domestic policies. For the two parties are in general agreement on foreign policy.

I believe that the development of our system of government along the lines of Professor Laski's proposal would be undesirable. The effect of it would be to subordinate Congress to the disciplined power of the parties, and this, I believe, must not be done if individual liberty is to be maintained.

In a properly working parliamentary system, discipline in the parties is not a threat to liberty. The parliamentary legislature has, subject to the will of the people, the ultimate power in government—the right to dismiss the executive. A parliamentary legislature can put up with a considerable amount of discipline because it is secure in its knowledge that if it wants to and when public opinion will back it, it can throw over the discipline and dismiss the group which wields it. But in the American system Congress cannot have this sense of security. If Congress were to yield to discipline by the parties it might some day find itself only the recorder of decisions taken by the parties outside its halls. One must hope that this will never come about.

The question is, though, will it come about? Will the two major parties diverge (one to the right and the other to the left) to such an extent that they will build up the discipline of which Professor Laski speaks? I do not think they will. The natural political state of affairs in the United States, with its feeling against class concepts, is to have the political platforms of the two parties on both domestic and foreign

policies as close as possible to that median line of popular opinion where 51 per cent of the votes lie. There is a compelling self-interest (the desire to get elected) at work to prevent the parties from moving too far from the centre line of belief which is the dominant sentiment of the American people.

This is not to say that the American parties will be identical in their political creeds. The parties have differed through all their history: the Democratic party and its predecessors having been the party of reform and of the strong popular leader-Presidents, while the Republican party and its predecessors have leaned toward Congressional supremacy in relation to the Executive and toward more orthodox social views. This divergence may increase. Some of the important organized groups, such as labour, the farmers or management, may attach themselves to one or other of the parties; and this would be a move in the direction of Professor Laski's prophecy. But even if this happened, it would be a long way from the kind of party discipline of which Professor Laski speaks. The American parties are too large to be dominated by any one group or by any likely combination of groups. There is, I think, no reason to believe that our Government will not be able to handle its domestic problems in the way it always has—by bursts of action such as the New Freedom, the New Deal and the Fair Deal, followed by periods of consolidation. This may not seem to be the best of all possible ways of doing things, but it has worked so far, and I see no reason to believe it will not work adequately in the limited future of which we are speaking.

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The requirements of our new foreign policy may however produce some changes in our government which have not been foreseen. If bipartisan agreement on foreign policy and bi-branch co-operation between the Executive and Congress falter, if the separation of powers and the conflict between Executive and Legislature become too powerful for the will to make things work, then a new and serious problem will arise. And, as I have said, this problem will become very serious indeed if the result of the conflict is to defeat policies

which the people of the country believe necessary to its safety.

Under such circumstances, and it is not impossible that such circumstances will arise, will there be any important change in the procedures of the Federal Government? Is there any chance, in this event, of an amendment to the Constitution whose purpose would be to make it more possible for us to handle our responsibilities abroad? <sup>1</sup>

I do not think that such an amendment is likely within any future about which we can talk. Important changes have been made in the Constitution by formal amendment, but never one which tampered with the fixed terms of office or the balance of power between the President and the Congress which is at the heart of the American system. The impact of public opinion would have to be tremendous before any such basic change could become a political possibility.

And even if popular opinion did reach such a pitch, I believe that the response would take another course. If the cold war becomes more intense, if the visible threats, political and economic, to Western Society become more serious, if public opinion in the United States becomes exasperated at the failure of some great national policy because of the conflicts inherent in the American system of government, then the response will be, I think, not to amend our basic law, but to treat the situation as a crisis and to adopt the remedies which are natural to our form of government—indeed to all democratic governments—in time of war. Just as we have always given the Executive all the power he needed during hostilities—even at the expense of a temporary subordination

<sup>1</sup> Senator Fulbright of Arkansas introduced such an amendment in the 80th Congress. The amendment provided that the President by executive order or the Congress by concurrent resolution might at any time terminate the terms of office of the President and the two Houses of Congress. In such event, a general election would be held at which all three—President, House and Senate—would be elected for six years or until their terms were ended by a new executive order or concurrent resolution. The purpose of the amendment was (1) to give to Congress the ultimate power of dismissing the Executive and thus to free Congress of the need to defeat the executive from time to time in order to assert its authority; and (2) to give the President the power to refer an issue on which he was defeated by the Congress to the people for their decision. The proposed amendment made no progress in the Senate.

of Congress—so I think that if the cold war were to come closer to a hot war, we would adopt the procedures we have used in the past when the country was in danger.

This would not be a desirable way of doing things. Any interference with the authority of Congress, even during actual hostilities, is dangerous. It would be most unfortunate if the practice were extended to deal with the problems of peacetime. But I think this is the most likely course if the international situation reaches the crisis stage.

It is more likely, though, that the international situation will continue along its present lines for a while—a state of near-crisis in the sense that certain fundamental conditions are so bad that the task of solving them seems almost impossible and the price of failing to solve them seems likely to be fatal—but not a crisis in the sense that drastic emergency action appears to be needed to defend the country against immediate disaster. It looks, that is, as though the cold war will remain cold for a while; and a cold war is not the kind of crisis which will, I believe, either compel a temporary impairment of the authority of Congress or a major Constitutional reform.

We shall see instead, I think, an effort to adapt the Constitution in its present form to the rising demands of our new foreign policy. Increased co-operation between the executive and legislative branches, efforts of the Executive to reach agreement with Congressional leaders on major foreign policies as they are being developed, and increased willingness of the parties to stop politics at the water's edge and to create bi-partisan national foreign policies—these are the lines we have been following and most likely will continue to follow.

If it were not for the size of the stakes, one would be content with this. But the new role of the United States in foreign affairs carries with it the risk of the failure of that role, and the consequences of failure are beyond measure. As an act of faith, I do not believe that we will fail; I believe that the necessary changes in our ways of governing will be made. But it will be a great struggle, a great test of statesmanship, and one cannot but be uneasy as one watches the issue develop.

## POETRY AND THE AMERICAN GOVERNMENT

An Anthology compiled by MURIEL SPARK, Co-Editor of *Forum*

AMERICAN poetry on political or state affairs has naturally been conditioned by the forms of government peculiar to the historical development of the United States, and in this sense differs from similar verse of the European countries. Amongst the early Colonists, for instance, the poets were concerned with nostalgic memories of their home land or with the problems of working the land on which they had settled rather than with the edicts of distant Whitehall, as in one of the earliest poems from America (Rich's *Newes from Virginia*):

Let England knowe our willingnesse, for  
that our work is goode;  
We hope to plant a nation, where none  
before hath stood.

It was not until pressure from Britain began to make its presence felt amongst the people, in the events which led up to the War of Independence, that verse on public affairs began to be written in any effective degree. Even then, it was such colourful episodes as the Boston Tea Party, and such momentous personalities as Paul Revere, rather than the economic forces behind the Revolution and the various Acts passed by George III's Parliament, that stirred the imagination of the poets.

In the following selection, the poems fall into the categories of (1) poems on public affairs which influenced legislation through public feeling; (2) poems in celebration and commemoration of public events; and (3)—by far the most numerous—poems in honour of statesmen and great historical figures. It is noteworthy that in the third category the most frequent subject of praise is Abraham Lincoln.

Looked upon as an exponent of liberty, Lincoln became the symbol of the American attitude, and his death by assassination lent a legendary feature to his memory, coinciding as it did with an upwelling of national spirit and creative energy. The significance of Lincoln to the American poet is apparent up to recent times in the work of such poets as Edwin Markham, Edwin Arlington Robinson, Edgar Lee Masters, Vachel Lindsay, James Oppenheim, and John Gould Fletcher, to mention only some.

Not a few politicians have themselves achieved recognition as poets, yet seldom have they written the type of verse that might be called "public spirited". This is understandable, since poetry was to these men more in the nature of a relaxation than a vocation; such poets as John Hay (Private Secretary to Lincoln, and American diplomat successively in the Paris, Vienna and Madrid Legations), Robert Underwood Johnson (American Ambassador to Italy) and Richard Henry Wilde (a member of the House of Representatives in 1815), expressed American affairs in terms of public speech and action, rather than through the reflective attitude of the poet.

American poets to-day are by no means silent on national and international affairs; but they, alas, stand outside the scope of this anthology, since time has not yet effected that metamorphosis upon their words, which occurs only when politics acquire the status of history.

### MERCY WARREN (1728-1814)

#### From *The Squabble of the Sea Nymphs*

(*This poem gives a satirical account of the Boston Tea Party episode, when the angry citizens dumped the East India Company's cargo of surplus tea into Boston Harbour in 1773.*)

Grey Neptune rose, and from his sea green bed,  
He wav'd his trident o'er his oozy head;  
He stretch'd, from shore to shore, his regal wand,  
And bade the river deities attend;  
Triton's hoarse clarion summon'd them by name,  
And from old ocean call'd each wat'ry dame.

In council met to regulate the state,  
 Among their godships rose a warm debate,  
 What luscious draught they next should substitute,  
 That might the palates of celestials suit. . . .

\* \* \* \* \*

(While luxury creates such mighty feuds,  
 E'en in the bosoms of the demi gods;)  
 Lent their strong arm in pity to the fair  
 To aid the bright Salacia's generous care;  
 Pour'd a profusion of delicious teas,  
 Which, wafted by a soft savonian breeze,  
 Supply'd the wat'ry deities, in spite  
 Of all the rage of jealous Amphytrite.

JONATHAN SEWALL (1748-1808)

From *War and Washington*

Urged on by North and vengeance those valiant champions  
 came,  
 Loud bellowing Tea and Treason, and George was all on flame,  
 Yet sacrilegious as it seems, we rebels still live on,  
 And laugh at all their empty puffs, huzza for Washington!

JOHN TRUMBULL (1750-1831)

From *Elegy on the Times* (1774)

Oh, Boston! late with ev'ry pleasure crown'd,  
 Where Commerce triumph'd on the favouring gales,  
 And each pleas'd eye, that rov'd in prospect round,  
 Hail'd thy bright spires and bless'd thy op'ning sails!

\* \* \* \* \*

Alas, how chang'd! the swelling sails no more  
 Catch the fair winds and wanton in the sky;  
 But hostile beaks affright the guarded shore,  
 And pointed thunders all access deny.

\* \* \* \* \*

And damp'd alas! thy soul-inspiring ray,  
 Where Virtue prompted and where Genius soar'd,  
 Or quench'd in darkness, and the gloomy sway  
 Of Senates venal and the liveried Lord!

There shame sits blazon'd on the unmeaning brow,  
 And o'er the scene thy factious Nobles wait,  
 Prompt the mixt tumult of the noisy show,  
 Guide the blind vote and rule the mock debate.

From *McFingal* (*The Liberty Pole*)

(*A satirical piece on the struggles between the Loyalists and the revolutionary Whigs.*)

By this, McFingal with his train  
 Advanced upon th'adjacent plain,  
 And full with loyalty possest,  
 Pour'd forth the zeal that fired his breast.

"What mad-brain'd rebel gave commission,  
 To raise this May-pole of sedition?

\* \* \* \* \*

"Ye dupes to every factious rogue  
 And tavern-prating demagogue  
 Whose tongue but rings, with sound more full,  
 On th'empty drumhead of his skull;  
 Behold you not what noisy fools  
 Use you, worse simpletons, for tools?  
 For Liberty, in your own by-sense,  
 Is but for crimes a patent license,  
 To break of law th'Egyptian yoke,  
 And throw the world in common stock;  
 Reduce all grievances and ills  
 To Magna Charta of your wills;

PHILIP FRENAU (1752-1832)

(*A friend and fellow-student of James Madison, Frenau, helped to found the American Whig Society in 1769, and is looked upon as the first poet of the American Independence.*)

From *On the Death of Benjamin Franklin*

Thus, some tall tree that long hath stood  
 The glory of its native wood,  
 By storms destroyed, or length of years,  
 Demands the tribute of our tears.



When monarchs tumble to the ground,  
 Successors easily are found:  
 But, matchless FRANKLIN! what a few  
 Can hope to rival such as YOU,  
 Who seized from kings their sceptred pride,  
 And turned the lightning's darts aside!

PHILLIS WHEATLEY (1754-1785)

*(As a child of eight years Phillis Wheatley was brought from her native Africa and sold on the Boston slave market. She fell into sympathetic hands in her master's household, where her rapid acquisition of the English language and her unusual literary talents were encouraged.)*

From *His Excellency General Washington*  
 . . . thick as leaves in Autumn's golden reign,  
 Such, and so many, moves the warrior's train.  
 In bright array they seek the work of war,  
 Where high unfurl'd the ensign waves in air.  
 Shall I to Washington their praise recite?  
 Enough thou know'st them in the fields of fight.  
 Thee, first in peace and honours,—we demand  
 The grace and glory of thy martial band.  
 Fam'd for thy valour, for thy virtues more,  
 Hear every tongue thy guardian and implore!

JOSEPH HOPKINSON (1770-1842)

*(In the author's own words, the object of the poem from which the following extract is taken, was "to get up an American spirit which should be independent of and above the interests, passions, and policy of both belligerents.")*

From *Hail, Columbia!*  
 Sound, sound, the trump of Fame!  
 Let our Washington's great name  
     Ring through the world with loud applause,  
     Ring through the world with loud applause;  
 Let every clime to Freedom dear,  
 Listen with a joyful ear.

With equal skill, and godlike power,  
He governed in the fearful hour  
Of horrid war; or guides, with ease,  
The happier times of honest peace.

WILLIAM CULLEN BRYANT (1798-1878)

*(A notable personage in Nineteenth Century New York, Bryant was entitled by his friends "the first citizen of the Republic", whilst the poet Emerson referred to him more soberly, as "a native, sincere, original, patriotic poet.")*

From *The Death of Lincoln*

Oh, slow to smite and swift to spare,  
Gentle and merciful and just!  
Who, in the fear of God, didst bear  
The sword of power, a nation's trust!

In sorrow by thy bier we stand,  
Amid the awe that hushes all,  
And speak the anguish of a land  
That shook with horror at thy fall.

RALPH WALDO EMERSON (1803-1882)

*(One of the most profound thinkers and writers of American letters, Emerson was possibly the first American poet whose influence extended to Europe. His mind was too widely philosophical to be confined within the limits of political partisanship, through the medium of poetry; and in the following lines he made it clear that his vision was larger than the troubles of the times to which he refers.)*

From *Ode (Inscribed to W. H. Channing)*

Though loath to grieve  
The evil time's sole patriot,  
I cannot leave  
My honied thought  
For the priest's cant,  
Or statesman's rant.

If I refuse  
 My study for their politique,  
 Which at the best is trick,  
 The angry Muse  
 Puts confusion in my brain  
 But who is he that prates  
 Of the culture of mankind,  
 Of better arts and life?  
 Go, blindworm, go,  
 Behold the famous States  
 Harrying Mexico  
 With rifle and with knife!

\* \* \* \* \*

The God who made New Hampshire  
 Taunted the lofty land  
 With little men;—  
 Small bat and wren  
 House in the oak;—  
 If earth-fire cleave  
 The upheaved land, and bury the folk,  
 The southern crocodile would grieve.  
 Virtue palters; Right is hence;  
 Freedom praised, but hid;  
 Funeral eloquence  
 Rattles the coffin-lid.

What boots thy zeal,  
 O glowing friend,  
 That would indignant rend  
 The northland from the south?  
 Wherefore? to what good end?  
 Boston Bay and Bunker Hill  
 Would serve things still;—

HENRY WADSWORTH LONGFELLOW (1807-1882)

*(Better known for his epic poetry, Longfellow published his Poems on Slavery some twenty years before the abolition of slavery; whilst*

*causing hostile criticism at the time of publication, these poems helped to evoke public discomfort by an awareness of the conditions of the slave.)*

From *The Slave's Dream*

Beside the ungathered rice he lay,  
His sickle in his hand;  
His breast was bare, his matted hair  
Was buried in the sand.  
Again, in the mist and shadow of sleep,  
He saw his Native Land.

Wide through the landscape of his dreams  
The lordly Niger flowed;  
Beneath the palm-trees on the plain  
Once more a king he strode;  
And heard the tinkling caravans  
Descend the mountain-road.

The forests, with their myriad tongues,  
Shouted of liberty;  
And the blast of the Desert cried aloud,  
With a voice so wild and free,  
That he started in his sleep and smiled  
At their tempestuous glee.

He did not feel the driver's whip,  
Nor the burning heat of day;  
For death had illumined the Land of Sleep,  
And his lifeless body lay  
A worn-out fetter, that the soul  
Had broken and thrown away!

JOHN GREENLEAF WHITTIER (1807-1892)

*(Whittier, a Quaker, helped to found the American Anti-Slavery Society in 1833 and devoted his energies to the Abolitionist cause. In a note to the following poem Whittier described the sufferings by disease and thirst of the negro slaves on board a French ship, on which several of the slaves who attempted suicide were shot or hanged as*

*examples to others. Finally, according to Whittier, "thirty-six of the negroes, having become blind, were thrown into the sea and drowned!"*)

From *The Slave-Ship*

Gloomily stood the captain,  
 With his arms upon his breast,  
 With his cold brow sternly knotted  
 And his iron lip compressed.  
 "Are all the dead dogs over?"  
 Growled through that matted lip;  
 "The blind ones are no better,  
 Let's lighten the good ship."

Hark! from the ship's dark bosom,  
 The very sounds of hell!  
 The ringing clank of iron,  
 The maniac's short, sharp yell!  
 The hoarse, low curse, throat-stifled;  
 The starving infant's moan,  
 The horror of a breaking heart  
 Poured through a mother's groan.

\* \* \* \* \*

"Overboard with them, shipmates!"  
 Cutlass and dirk were plied;  
 Fettered and blind, one after one,  
 Plunged down the vessel's side.

JAMES RUSSELL LOWELL (1819-1891)

*(A staunch Abolitionist, Lowell adopted the subtle method, through his Biglow Papers, of creating a rustic Yankee character as a mouthpiece for some sage and straightforward speaking. In this way, Lowell gave vent to some of his feelings on slavery, war, and the political situation in general.)*

From *The Biglow Papers*

Them thet rule us, them slave-traders,  
 Haint they cut a thunderin' swarth  
 (Helped by Yankee renegaders),  
 Thru the vartu o' the North!

We begin to think it's nater  
 To take sarse an' not be riled;—  
 Who'd expect to see a tater  
 All on eend and bein' biled?  
 Ez fer war, I call it murder,—  
 There you hev it plain an' flat;  
 I don't want to go no funder  
 Than my Testyment fer that;  
 God hez sed so plump an' fairly,  
 It's ez long ez it is broad,  
 An' you've gut to git up airly  
 Ef you want to take in God.

'Taint your eppyletts an' feathers  
 Make the thing a grain more right;  
 'Taint afollerin' your bell-wethers  
 Will excuse ye in His sight;  
 Ef you take a sword an' dror it,  
 An' go stick a feller thru,  
 Guv'ment aint to answer for it,  
 God'll send the bill to you.

\* \* \* \* \*

Aint it cute to see a Yankee  
 Take sech everlastin' pains,  
 All to git the Devil's thankee  
 Helpin' on 'em weld their chains?  
 Wy, it's jest ez clear ez figgers,  
 Clear ez one an' one make two,  
 Chaps thet make black slaves o' niggers  
 Want to make wite slaves o' you.

*From The Biglow Papers*

Guvener B. is a sensible man;  
 He stays to his home an' looks arter his folks;  
 He draws his furrer ez straight ez he can,  
 An' into nobody's tater-patch pokes;  
 But John P.  
 Robinson—he

Sez he wunt vote fer Guvener B.

\* \* \* \* \*

Gineral C. is a drefle smart man;  
 He's ben on all sides thet give places or pelf;  
 But consistency still wuz a part of his plan.—  
 He's ben true to *one* party,—an' thet is himself;—  
     So John P.  
     Robinson he  
 Sez he shall vote for Gineral C.

### HERMAN MELVILLE (1819-1891)

*(After an adventurous life at sea, Melville established a reputation as a writer of stories [amongst them the classic, Moby Dick]. The Civil War stimulated his poetic ability, and in the following lines he portrayed the famous Federal General, Ulysses Grant, who later became President for two terms.)*

From *Chattanooga* (November, 1863)

A kindling impulse seized the host  
 Inspired by heaven's elastic air;  
 Their hearts outran their General's plan,  
     Though Grant commanded there—  
     Grant, who without reserve can dare;  
 And, "Well, go on and do your will,"  
     He said, and measured the mountain then:  
 So master-riders fling the rein—  
     But you must know your men.

On yester-morn in grayish mist,  
 Armies like ghosts on hills had fought,  
 And rolled from the cloud their thunders loud  
     The Cumberlands far had caught:  
     To-day the sunlit steeps are sought.  
 Grant stood on cliffs whence all was plain,  
     And smoked as one who feels no cares;  
 But mastered nervousness intense,  
     Alone such calmness wears.

## WALT WHITMAN (1819-1892)

*(Whitman's influence, like that of his compatriots Emerson and Poe, spread beyond the boundaries of America, and persists in English poetry to this day. As in his own lifetime, opinion is still divided as to the merits of his work, yet the most extreme partisans for and against Whitman seem to agree that his Memories of President Lincoln constitutes one of the finest elegiac sequences in the English tongue.)*

From *Memories of President Lincoln*

When lilacs last in the dooryard bloom'd,  
 And the great star early droop'd in the western sky in the  
     night,  
 I mourn'd, and yet shall mourn with ever-returning spring.

Ever-returning spring, trinity sure to me you bring,  
 Lilac blooming perennial and drooping star in the west,  
 And thought of him I love.

\*   \*   \*   \*   \*   \*

Coffin that passes through lanes and streets,  
 Through day and night with the great cloud darkening  
     the land,  
 With the pomp of the inloop'd flags with the cities draped  
     in black,  
 With the show of the States themselves as of crape-veil'd  
     women standing,  
 With processions long and winding and the flambeaus of the  
     night,  
 With the countless torches lit, with the silent sea of faces and  
     the unbared heads,  
 With the waiting depot, the arriving coffin, and the sombre  
     faces,  
 With dirges through the night, with the shout and voices  
     rising strong and solemn,  
 With all the mournful voices of the dirges pour'd around the  
     coffin,  
 The dim-lit churches and the shuddering organs—where  
     amid these you journey,  
 With the tolling, tolling bells' perpetual clang,



Here, coffin that slowly passes,  
I give you my sprig of lilac.

\* \* \* \* \*

I cease from my song for thee.  
From my gaze on thee in the west, fronting the west, com-  
muning with thee,  
O comrade lustrous with silver face in the night.

Yet each to keep and all, retrievements out of the night,  
The song, the wondrous chant of the grey-brown bird,  
And the tallying chant, the echo arous'd in my soul,  
With the lustrous and drooping star with the countenance  
full of woe,  
With the holders holding my hand nearing the call of the  
bird,  
Comrades mine and I in the midst, and their memory ever  
to keep, for the dead I loved so well,  
For the sweetest, wisest soul of all my days and lands—  
and this for his dear sake,  
Lilac and star and bird twined with the chant of my soul,  
There in the fragrant pines and the cedars dusk and dim.

\* \* \* \* \*

O Captain! my Captain! our fearful trip is done,  
The ship has weather'd every rack, the prize we sought is  
won,  
The port is near, the bells I hear, the people all exulting,  
While follow eyes the steady keel, the vessel grim and  
daring;

But O heart! heart! heart!  
O the bleeding drops of red.  
Where on the deck my Captain lies,  
Fallen cold and dead.

## AMERICAN GOVERNMENT

## A SELECT BIBLIOGRAPHY

THIS list of books dealing with the government of the United States is in no sense comprehensive. Limitations of space have made it necessary to include in it only a small proportion of the vast literature on the subject. In particular, certain classes of publications have been omitted entirely. These include the volumes of the U.S. statutes, laws and federal regulations, presidential messages and papers, reports of cases adjudged in the Supreme Court and other American courts, biographies and memoirs of men and women who have been prominent in American public life, books on political science and its relation to the American environment, books about general American history, the various periodical publications devoted to the art and science of government, newspaper and magazine articles, and poetry, drama and fiction dealing with various aspects of government in America.

In deciding which of several books on the same subject should be included, preference was normally given to recently published books still in print and to books likely to be available in libraries throughout the world. I should like to acknowledge the very great help I received in compiling this bibliography from the General Reference and Bibliography Division, Reference Department, The Library of Congress, Washington, D.C. Responsibility for the inclusion or omission of any book is, of course, mine.

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## CORRESPONDENCE

## DEMOCRACY AND THE QUAKER METHOD

Sir,

We are most grateful to T. Edmund Harvey for his kind comments on our book *Democracy and the Quaker Method in Parliamentary Affairs*, but, to avoid misunderstanding, would expressly dissociate ourselves from his implied approval of national or coalition government. We nowhere refer to such a subject, which is not relevant to the kind of group unity which we were concerned to discuss.

Similarly, proportional representation has no immediate relevance to our theme. We wanted to contribute as much to the psychological as to the political problems of democracy.

We are, Sir,

Yours faithfully,

FRANCIS E. POLLARD

BEATRICE E. POLLARD

ROBERT S. W. POLLARD

5 Spencer House,  
Spencer Road, Chiswick, W.4

## PROPORTIONAL REPRESENTATION

Sir,

In his article on "The British Constitution in 1948" Dr. Hawgood says that proportional representation in our University constituencies has not had conspicuous success. I wonder what are his grounds for that judgment? It is certainly true that the Universities have not achieved fair representation of all parties (the Labour minority, for instance, has never won a seat) but that could not be expected in constituencies returning only two (in one case three) Members each.

Within the limits imposed by that small number, the success



of the system surely has been conspicuous; we have only to compare Oxford and Cambridge under P.R. with the same two Universities under the old system. Before 1918, both were to all intents and purposes Conservative pocket boroughs: any man whom the party chose to nominate there was certain of election, whether his personal qualities were or were not such as the representative of a University ought to possess. In the eight general elections from 1885 to 1910, only one such nomination was even contested in Cambridge, and none in Oxford. Since the introduction of P.R. in 1918, only one election (1931) in each University has *not* been contested, and the Members include distinguished Independents, such as Sir Arthur Salter, who probably would not have been elected elsewhere. The Conservatives can still win University seats, but only by nominating people who are in themselves worth voting for.

I notice also that Mr. Herbert Morrison, in the printed version of his lecture on "British Parliamentary Democracy", repeats the assertion that proportional representation "tends to foster splinter parties" although he can give no instance of this effect. His French audience must have wondered what country he had in mind, for in France the effect has been the opposite—the splinter parties for which France was notorious before 1945 have become fewer since the adoption of a proportional system in that year.

Yours faithfully,  
ENID LAKEMAN

The Proportional Representation Society,  
London, S.W.1

## BOOKS RECEIVED

*The inclusion of a book in this list does not preclude its review in a subsequent issue of Parliamentary Affairs. Any of the books in the list or reviewed on pages 283 to 294 can be ordered through the Hansard Society.*

BOYD, ANDREW and WILLIAM METSON (for the United Nations Association).  
*Atlantic Pact, Commonwealth & United Nations.* Hutchinson. 8s. 6d.

BUTTERFIELD, H. *George III, Lord North, and the People, 1779-80.* Bell. 30s.

CAMPBELL, SIR GERALD. *Of True Experience.* Hutchinson. 18s.

CARODOG JONES, D. *Social Surveys.* Hutchinson. 7s. 6d.

FILMER, SIR ROBERT. *Patriarcha.* Edited and with an Introduction by Peter Laslett. Oxford: Blackwell. 12s. 6d.

GLADDEN, E. N. *An Introduction to Public Administration.* Staples. 12s. 6d.

HAWTRY, R. G. *Western European Union.* Royal Institute of International Affairs. 5s.

HOLLIS, CHRISTOPHER. *Can Parliament Survive?* Hollis & Carter. 9s.

KEPPEL-JONES, ARTHUR. *South Africa.* Hutchinson. 7s. 6d.

MAURA, DUQUE DE, and MELCHOR FERNANDEZ ALMAGRO. *Por Qué Cayó Alfonso XIII.* Madrid: Ediciones Ambos Mundos.

MOODIE, A. E. *Geography Behind Politics.* Hutchinson. 7s. 6d.

PHILIPS, C. H. *India.* Hutchinson. 7s. 6d.

SPEAR, PERCIVAL. *India, Pakistan, and the West.* Oxford University Press. 5s.

SPROTT, W. J. H. *Sociology.* Hutchinson. 7s. 6d.

STANNARD, HAROLD. *The Two Constitutions.* Black. 12s. 6d.

VOIGT, F. A. *Pax Britannica.* Constable. 25s.

## BRITISH GOVERNMENT PUBLICATIONS

*Most of the British Government publications listed on this page are of parliamentary or constitutional interest. All Government publications, including Hansard for the House of Lords and House of Commons (daily parts, weekly editions, or bound volumes) can be ordered through the Hansard Society.*

- Boundary Commission for England.* Report. (Cmd. 7745.) 1d. Report. (Cmd. 7787.) 2d.
- Consolidation Bills, 1948-49.* Third Report by the Joint Committee (Representation of the People Bill). (H.L. 29-II, 129-I, H.C. 201-I.) 2s. 6d. Fourth Report (Civil Aviation Bill). (H.L. 29-III, 130-I, H.C. 200-I.) 4d. Fifth Report (Agricultural Holdings (Scotland) Bill). (H.L. 29-IV, 153, H.C. 214.) 6d. Sixth Report (Marriage Bill). (H.L. 29-V, 168, H.C. 232.) 1s. 3d.
- Consolidation of Enactments (Procedure) Act, 1949.* Memorandum (Marriage). (H.L. 112, H.C. 183.) 6d. Memorandum (Excise Duties in mechanically propelled vehicles). (H.L. 118, H.C. 191.) 1d.
- Estimates, Select Committee on.* Seventh Report (The Administration of the National Health Services). (H.C. 176, 178.) 4s. Eighth Report (Departmental Replies to the Second Report on the Defence Estimates and to the Sixth Report on Production and Marketing of Opencast Coal). (H.C. 221.) 2d. Ninth Report (Government Hospitality Departmental Entertainment and Official Entertainment in the Armed Forces). (H.C. 237.) 1s. 6d. Tenth Report (Hostels). (H.C. 238.) 5s. Eleventh Report (Agricultural Services). (H.C. 239.) 9d.
- House of Commons (Indemnification of Certain Members Act) Act, 1949.* (12 and 13 Geo. 6., Ch. 46.) 1d.
- House of Commons (Redistribution of Seats) Bill.* (H.L. 161.) 4d.
- House of Lords Offices.* Fourth Report by the Select Committee. (H.L. 138.) 1d.
- Justice of the Peace Bill.* (H.L. 114.) 1s. Amendments to be moved in Committee. (H.L. 114a.) 1d. Amendments to be moved in Committee (H.L. 114b.) 3d. Amendments to be moved in Committee (H.L. 114c.) 2d.
- Kitchen and Refreshment Rooms (House of Commons).* Second Special Report from the Select Committee. (H.C. 222.) 2d.
- Law Reform (Miscellaneous Provisions) Bill.* (H.L. 139.) 2d. Amendments to be moved in Committee. (H.L. 139a.) 1d.
- Local Government Boundary Commission (Dissolution) Bill.* (H.C. 175.) 1d.
- Married Women (Restraint upon Anticipation) Bill.* (H.L. 178.) 1d.
- National Coal Board.* Report and Accounts for 1948. (H.C. 187.) 6s. 6d.
- Public Records, Guide to the.* Part I: Introductory. (44-5065-I.) 2s.
- Representation of the People Bill.* (H.C. 173.) 4s. 6d.
- Staff Relations in the Civil Service.* (63-114.) 9d.
- Statutory Orders (Special Procedure) (Substitution) Order, 1949.* Draft. (Cmd. 7756.) 3d.
- Statutory Instruments, Select Committee on.* Minutes of Proceedings. (H.C. 213.) 2d. Minutes of Proceedings. (H.C. 227.) 1d.
- Supreme Court Practice and Procedure, Interim Report of the Committee on.* (Cmd. 7764.) 1s.

## BOOK REVIEWS

**The Two Constitutions.** By Harold Stannard. Black.  
12s. 6d.

Mr. Harold Stannard in the engagingly modest introduction to his comparative study of the British and American systems of Government says that his book springs from a desire to satisfy his intellectual curiosity. "How comes it that institutions which admittedly spring from a common root should stand in such sharp contrast to one another?" He finds, on examination, that the answer to his question is to be found in the fact that "for all its sharpness, the contrast is one of means, not of ends, not even of method". Thus, although his comparison constantly leads him to point out the differences of usage, procedure, terminology and mechanism for which the English student of public affairs must always be watchful when he is viewing the American political scene, Mr. Stannard also finds that the constitutional experience of eighteenth and seventeenth century Britain had survived in the institutions of both countries as a force making for common respect for law and liberty.

This is a welcome approach to the study of Anglo-American institutions, because although it is a healthy instinct which warns us against expecting to find duplications of Westminster and Whitehall underneath the very different skies of Washington, it is also easy to go too far in exaggerating the differences between our two systems. Even the most obvious, and at first sight the most far reaching contrast, that between the written Constitution of the Founding Fathers and the "non-existent" Constitution of the British Commonwealth, can be magnified and misunderstood. As Mr. Stannard cogently points out, the difference signified very little more than that the one was written as a whole in a few months to meet an urgent crisis, and the other represents the accumulation of centuries, in which the written

element has certainly played no insignificant part. Indeed, he points out, between the American Constitution on the one hand and Magna Carta, Bill of Rights, Parliament Act, and the rest on the other, there is a "fundamental resemblance—the need in both countries of the spur of necessity to produce the written word". Thus too it comes about that while both countries revere their Constitution sufficiently to fight—and even provoke a civil war—for the sake of it, they have a common preference for commonsensical adaptation rather than rigid, precedent-bound adherence to the bare letter. Only a widespread ignorance of the flexibility and adaptability of the U.S. Supreme Court could explain the persistence amongst comparatively well-informed English people of the idea that American politics is bound hand and foot to the archaic pillar of an eighteenth century prescription. Mr. Stannard points out that it is an English Lord Chancellor who delivers himself of the pronouncement that

"The law is the true embodiment  
Of everything that is excellent.  
It has no account of fault or flaw,  
And I, My Lords, embody the law."

He might have gone on to quote the American Supreme Court Justice who observed "We live under a constitution, but the constitution is what the Judges say it is." Judicial stubbornness and misplaced zeal have, it is true, reared their monuments on each side of the Atlantic; Dred Scott and the Taff Vale Case live in the history books as reminders that the Anglo-Saxon respect for the viable cannot always survive the professionalism of lawyers. But it is reasonable for both Americans and Englishmen to interpret the broad movement of their political development as a steady progress in the art of coaxing the river of Change to flow between the banks of Constitutionalism.

If it is true that the political genius of the two nations, for all its differences of expression, is fundamentally the same, it might be expected to reveal its identity most clearly in those features of politics which are least cramped and formalized by law or precedent, namely the great political parties. Yet

it is here that at first glance the differences seem most pronounced. Are we not always brought up to believe that British parties divide on principle and their American opposite numbers on some incalculable, incomprehensible, almost mystic distinction between Republicans and Democrats? Even those who claim to have pierced the mysticism usually come back heavily freighted with cynicism, and tell us that they are merely sectional alliances for the purpose of plundering the public purse. Here again, however, a closer examination will suggest that the range of difference from American Republican to British Socialist is nothing like as wide as theory would have us believe. If Lord Bryce has handed down to us the journalists' observation that the American parties are like two identical bottles, bearing different labels, and both empty, Mr. Stannard very properly reminds us that it was President Lowell of Harvard who observed that "the organizations of both the great nineteenth century English parties were shams, the one transparent, and the other opaque". The truth is that a superficial American cynicism and, one hopes, an equally superficial English form of political priggishness, have converged to propagate the myth that whereas there is no difference between Democrats and Republicans, there is an unbridgeable void between Conservatives and Socialists—at least if the Liberals would only accommodate themselves to this polarity and bow themselves out of the way. This myth has had curious repercussions on the popular theory of the relationship in each country between the political administration of the day and the permanent civil servants. According to it, a change of administration in the United States involves the removal of all civil servants and their replacement by supporters of the victorious party; this, however, is not as serious as it might seem, because since there is no difference between the parties there is also no difference between their attendant administrators. In England, by contrast, an even greater miracle is supposed to ensue by which a body of permanent, high-principled and yet politically colourless civil servants can serve political masters of

opposite extremes without for one moment losing their personal integrity or honest independence of judgment. The truth is, of course, widely different. The day is fast approaching, if it has not already arrived, when the differences between Republican and Democrat will be at least as real as those between Conservative and Socialist, however much the greater size and divergence of the United States may obscure this fact by the wide range of its regional peculiarities. Equally, though a vast expenditure of campaign eloquence will shortly be devoted to proving the contrary, no major party in English politics has shown any persistent disposition to allow an absolute and permanent gulf of principle to separate it from its opponent. Continuity can thus persist throughout changes of administration. This is as true of Whitehall as of Washington. British civil servants can thus faithfully serve successive masters because they know that change will not mean complete reversal of policy. In Washington the days when "to the victor belong the spoils" are virtually over. The huge machinery of American government could no more stand a wholesale eviction of its management every four years than the Ford Motor Company could survive a complete change-over of its factory hands. The truth is that, faced in so many ways with similar problems, the problems of bigness in government, of reconciling liberty and organization, of transforming government from negative regulation into some degree of positive control, the political genius of the two countries is borrowing increasingly from each other's experience. Underlying much that is different there are common traditions and, most important of all, a range of common ideals.

H. G. NICHOLAS.

*(Mr Nicholas is a Fellow  
of Exeter College, Oxford.)*

**George Washington: A Biography.** By Douglas Southall Freeman. Eyre & Spottiswoode. Volumes 1 and 2. 18s. each.

**Jefferson the Virginian.** By Dumas Malone. Eyre & Spottiswoode. Volume 1. 21s.

**Thomas Jefferson and American Democracy.** By Max Beloff. Hodder and Stoughton for the English University Press. 5s.

**Autobiography of Benjamin Franklin.** Dent (Everyman's Library, No. 316). 4s. 6d.

It is worth pondering that during the eighteenth century the best British liberals, radicals and democrats were the American revolutionary leaders. Washington, Jefferson, the Adams, Benjamin Franklin, Alexander Hamilton—the list of these colonial squires, gentry, and professional men is astoundingly long. And if anyone to-day thinks they were real radicals in the left-wing Continental sense of the French Revolution, let him read any or all of a series of valuable books recently published on these statesmen and uniters of the United States.

Begin, as Americans begin, with George Washington himself. Mr. Douglas Southall Freeman, the indefatigable Virginian editor and biographer of Robert E. Lee, has brought out the first two volumes of his biography of Washington. It has not the glamour, the sweep, and the buoyancy of his earlier biography of a fellow-Virginian, but that is because at no time in his life could Washington compare with Lee in personality (or even—tell it not in Gath!—in integrity), and secondly because these first two volumes only take us from 1732 to 1758 in young Washington's life. But the chief interest in Mr. Freeman's new work lies in its scrupulous scholarship, its original researches, and its floodlighting of the entire Virginia background from the beginnings of the seventeenth century. Here Mr. Freeman could do what would have been out of place in his four volumes on Lee: he could bring genealogy, sociology, economics and politics together to describe, with a wealth of enthralling detail, how "the Old Dominion" became that Virginia from which the Lees, Washingtons, Jeffersons, Henrys, and so many others organized the Revolution. Against this background loom other shapes: the beginnings of "land hunger" in the thinly-settled Atlantic coastal strip (which is all "America" then



was); the casting of Eastern eyes towards the interior, then called "the lands of the Ohio"; the first trickle of Southern trekkers over the Piedmont and the mountains into what is now the lower Middle West. Among them, as a colonial civil servant *pro tem.*, went the young surveyor Washington; and there, on the side, he acquired more lands for himself than he or his family ever owned in Virginia. These two books—rather like Senator Beveridge's classic first volume on Abraham Lincoln—tell us far more about the American beginning, about what was (and therefore is) Americanism, than they do about the subject of their biography. Mr. Freeman's work, in this wider sense, is as exciting as any "wild Western"—which, in a way, is exactly what it is! For until 1758 all America—British North America—*was* a wild West, tempered along its tiny coastal strip by a few beautiful red-brick towns. One day's gallop away were the forest primeval and the Indians.

In the small, intimate red-brick towns were the professional men: the lawyers, on whose work (more than on that of any others) rests the American Constitution and the "American Way" to-day, with its multiplicity of laws, courts, and legal men; or the architects, like Jefferson; or the printers, scientists, traders and writers, like Franklin. Professor Dumas Malone's book is a fitting tribute to Jefferson, who (even more than Washington) set out to rear a great sovereign state upon his own beloved Virginia as a basis. It complements Mr. Freeman's study of Virginia's beginnings. It sets off Jefferson against Washington in quite a revealing way. Washington, the Virginian country surveyor and squire, turns out to have been, as a military man of action in the ensuing Revolution, far wiser than the architect-Governor of Virginia, Jefferson. But here, again, we have only part of a work before us; for Professor Malone has to leave Jefferson when he sailed for France as American plenipotentiary after the Revolution has succeeded, in 1784. The best of Jefferson, another forty years of his remarkably creative life, is yet to come; and if it is just as stimulatingly treated as the first half in the present volume, it will be a book to earmark. For

Professor Malone, like Mr. Freeman, is a scrupulous, unbiased, yet fascinating biographer. His subject lives, and so does the subject's world about him, as we read.

Jefferson left his beloved Monticello, his red-brick and whitestone quoins of Virginia's lovely houses, to replace in Paris in 1784 one of the most remarkable men of all time: Benjamin Franklin. This man, a British colonial from Boston, settled modestly in trade in "the city of brotherly love", Philadelphia, practically saw the whole of the great eighteenth century through: 1706 to 1790. In his writings, scientific researches, political statesmanship and diplomacy he was well-nigh as versatile as Leonardo da Vinci, and on the whole far sounder. He, too, had a big hand in the Revolution; but he did not particularly want to! His preference was for a continuation of the link with Britain. (at France's expense) in order to rule the whole of North America and keep it British; and he did not abandon this view until the very eve of revolution itself. The ever-ready Everyman's Library have therefore served us well in producing at this time Franklin's famous Autobiography in a new edition, with the valuable addition of an index, and with a discerning introduction by the editor, Mr. W. Macdonald, who has also added an account of Franklin's later life. This little book is, in such small compass and at four-and-sixpence, the best introduction to Franklin and his work that I have seen.

And that brings me to the real theme of this all-too-brief review. It can best be summed up by yet another review: this time, of Max Beloff's original contribution to the successful *Teach Yourself History* series which Mr. A. L. Rowse is so ably building up. Mr. Beloff's study of "the great democrat" leads up to a last chapter, which is a kind of coda: "the Jeffersonian legacy". In it, he poses the questions which all these books pose to us to-day, and he sketches replies to them. What ferment, what peculiar germ, was it that went to work on these very young, not particularly "educated", colonial gentlemen in Virginia or Pennsylvania between 1725 and 1775? What fashioned their aims, what lay beyond and behind the revolution they made? In Mr. Beloff's last

chapter, we get as good an answer as I have yet seen, by way of hindsight. He looks at their legacy, as it unfolded throughout the nineteenth century and up till to-day; and he thereby enables us to stitch together the materials we obtain from the other books I have mentioned here.

"The American Way", to-day, is signalized by three things: equality of opportunity (for 90 per cent); emphasis upon individual enterprise; and direct pressures upon Government through democratic institutions (including "lobbies" and "pressure groups"). All this can be traced back to tidewater, up-country, pioneer beginnings; to Virginia first, and then the opening-up of the great Mid-West; to the struggles between "a strong power at the centre" and the men who stood for "States' Rights"—the issue between Jefferson and Hamilton, with Washington uncomfortably straddling the middle of the seesaw; to hatred of imperialisms, aristocracies, and subjugations of man by man; and, lastly, to a real fear of what both Jefferson and Lincoln long after him termed "mobocracy"—unbridled, unchecked, unbalanced tyranny by a majority of votes over all minorities. Hence the "checks and balances" of American life. Hence, too, the inner contradictions and stalemates, whether on domestic or foreign policy. The emergence of America as the greatest Power the world has ever seen, within one generation, has meant acute growing-pains as it bursts its old bonds.

Yet the spate of books on America's beginnings is not only valuable to us in interpreting the America of to-day. It is valuable in helping us to interpret to ourselves a lot of our own current problems in Britain and Europe. Of these, federation for survival, the safeguarding of real democracy, and the preservation of individual freedoms are not the least.

GRAHAM HUTTON.

*(Assistant Editor, The Economist, 1933-8; Director,  
British Information Services, Chicago, 1941-5.)*

**Presidential Government in the United States.** By C. Perry Patterson. The University of North Carolina Press (London: Cumberlege). 21s.

**The President: Office and Powers.** By E. S. Corwin.  
New York University Press (London: Cumberlege). 35s.

One of the major differences between Great Britain and the United States of America is that whereas in this country we are used to thinking of our government as omniscient and to concentrate almost exclusively upon policy, Americans can hardly consider policy without discussing also the instrument by which it is to be made effective. This may explain in part the greater prominence given to "political science" in American academic curricula, and also the number of suggestions for radical constitutional reform that have lately made their appearance.

If less is actually done than all this intellectual ferment might lead one to expect, the reason is not far to seek. "The average American" writes Professor Patterson towards the end of his provocative, uneven, repetitive, learned and crotchety book, "does not understand how the government works, and it is too complex to be explained to him from the stump. He knows, however, that he wants a President, a Congress of two houses, and a Supreme Court". Unlike other reformers, Professor Patterson wants to give him all this, and heaven too.

The diagnosis of the evil is what might be expected from a Jeffersonian democrat gone sour. The American political system under the pressure of "science" (i.e., industrialism) has departed further and further from its original principles. The states have been swallowed up into a centralized system of government. The Court has in accordance with its inevitable tendency to follow, if at a distance, the dominant trend of politics, abdicated its function of judicial review except where it is necessary to prevent State action from interfering with Federal policies. Finally and most serious of all, the President, combining both executive and political authority, has taken over the political leadership that Congress cannot under its present organization hope to exercise. Under the shadow of his authority a vast complex of commissions and boards, enjoying delegated authority and combining in defiance of the constitutional principle, judicial and legislative with executive functions, now enter into every daily activity of the American

citizen. The whole of this machine can only be held together by "politics"; in other words by political patronage and intrigue on the part of the President. Thus the Government has become a "government of men not of laws", in the old phraseology, while at the same time no rational principle can be introduced into the selection of the men who are to wield this great power. This, argues Professor Patterson, is the very essence of totalitarianism.

The arguments, largely historical, by which Professor Patterson justifies this exposition are varied and often ingenious. He has however the non-historian's weakness of quoting isolated opinions of other authorities with insufficient attention to their temporal context.

Of greater originality are his positive proposals. The only way out, he argues, is to bring the constitutional working of the system closer to its actual working, that is to say to produce a system of responsible government through the overt recognition of the two-party system in Congress. What he proposes, in brief, is a political Cabinet composed of the leaders of the majority party in the two Houses who will be responsible for policy and legislation—a sort of super-steering committee which will restore to Congress the powers of which its committees and their chairmen have robbed it. The floor of Congress, like the floor of the House of Commons, will become the real political arena on which reputations are made or lost. Where the minister is in one House, a vice-minister will speak for him in the other. Questions can be asked in both. These Cabinet-members will not supersede the present members of the President's Cabinet who would remain as the administrative heads of departments of which the new Congressional Cabinet-members would be political heads.

There is no question of introducing a power of dissolution to deal with deadlocks nor of altering the constitutional terms of President and Congress. If a different party has a majority in the House from that having a majority in the Senate, the result would be a coalition Cabinet. This, Professor Patterson rather too readily assumes, would be a safeguard against deadlocks.

It is perhaps a pity that Professor Patterson has not spent more time examining his proposals in the light of experience of responsible government elsewhere, even if this meant sacrificing some of the space he devotes, for instance, to comparatively well-known aspects of the history of the Supreme Court. If he had done so, he might not have been content with stating, in answer to obvious possible objections that "of course, bicameralism, federalism, and judicial review exist in all the units of the British Commonwealth except in Great Britain, yet they all have cabinet government". It is not quite as simple as that.

Professor Corwin's book is a very different affair. It is the third edition of a work that since its appearance in 1940 has been recognized as the outstanding study of its subject. He has now added to the text discussions of the important developments of the war-time powers of the Presidency under Roosevelt, and of other constitutional topics, including the new role of Congress in international relations in recent years and the question of relations between Congress and government servants raised by the "loyalty" issue.

Like Professor Patterson, however, he sees the crux of the problem of American government to lie in the relations between President and Congress. This is really, as he points out, two problems: "first, the problem of bringing presidential power in *all* its reaches under some kind of institutional control; secondly the problem of relieving presidential leadership in the legislative field of its excessive dependence on the accident of personality and the unevenness of performance which this involves". His solution is again in essentials a similar one and involves no constitutional amendments. "*It is simply that the President shall construct his Cabinet from a joint Legislative Council to be created by the two houses of Congress and to contain its leading members.* Then to this central core of advisers may be added at times such heads of departments and independent agencies as the business forward at the moments naturally indicates." This, of course, is very close to the suggestion put forward for a joint executive-legislative Cabinet in Mr. Thomas K. Finletter's *Can Representative Government do the Job?*

At first sight such proposals do little more than make formal acknowledgement of the fact that co-operation with Congressional leadership is a pre-requisite for any successful programme on Presidential initiative. What it does not seem to do is to tackle the reasons which make Congress normally so recalcitrant. Professor Patterson may be alarmed at the overwhelming accumulation of power in the hands of the President; foreign observers are more likely to marvel at his impotence. Professor Corwin's breezy assumption that party politics is all a lot of nonsense anyhow, and that the job is essentially the practical one of "*nation-keeping*" does not get us much further forward. Nor is it easy to see how such suggestions contribute to the de-personalizing of executive power that Professor Corwin regards as so essential.

But such questions are best left to Americans themselves. For the English student of politics, the essential thing is the complete and realistic picture that Professor Corwin gives of the position of the American President—that office upon the holder of which so much has only recently depended, and may again depend.

MAX BELOFF.

*(Mr. Max Beloff is Reader in the Comparative Study of Institutions, Oxford University, and a Fellow of Nuffield College.)*

**A Survey of American Government.** By Harold Zink. Macmillan. 24s.

Professor Zink attacks his subject at a level which he assures us is above that of an undergraduate course at an American university, but which would hardly be likely to give a British undergraduate any difficulty. In addition to discussing federal, state, and local governments in all their branches, he dabbles in the less conventional waters of "pressure groups" and public opinion. The book has the merit of being up-to-date, with a comprehensive if necessarily sketchy discussion of war-time developments in American governmental practice. It should be a useful volume for quick and ready reference.

DAVID C. WILLIAMS.

*(Mr. Williams is the London Representative of Americans for Democratic Action.)*



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